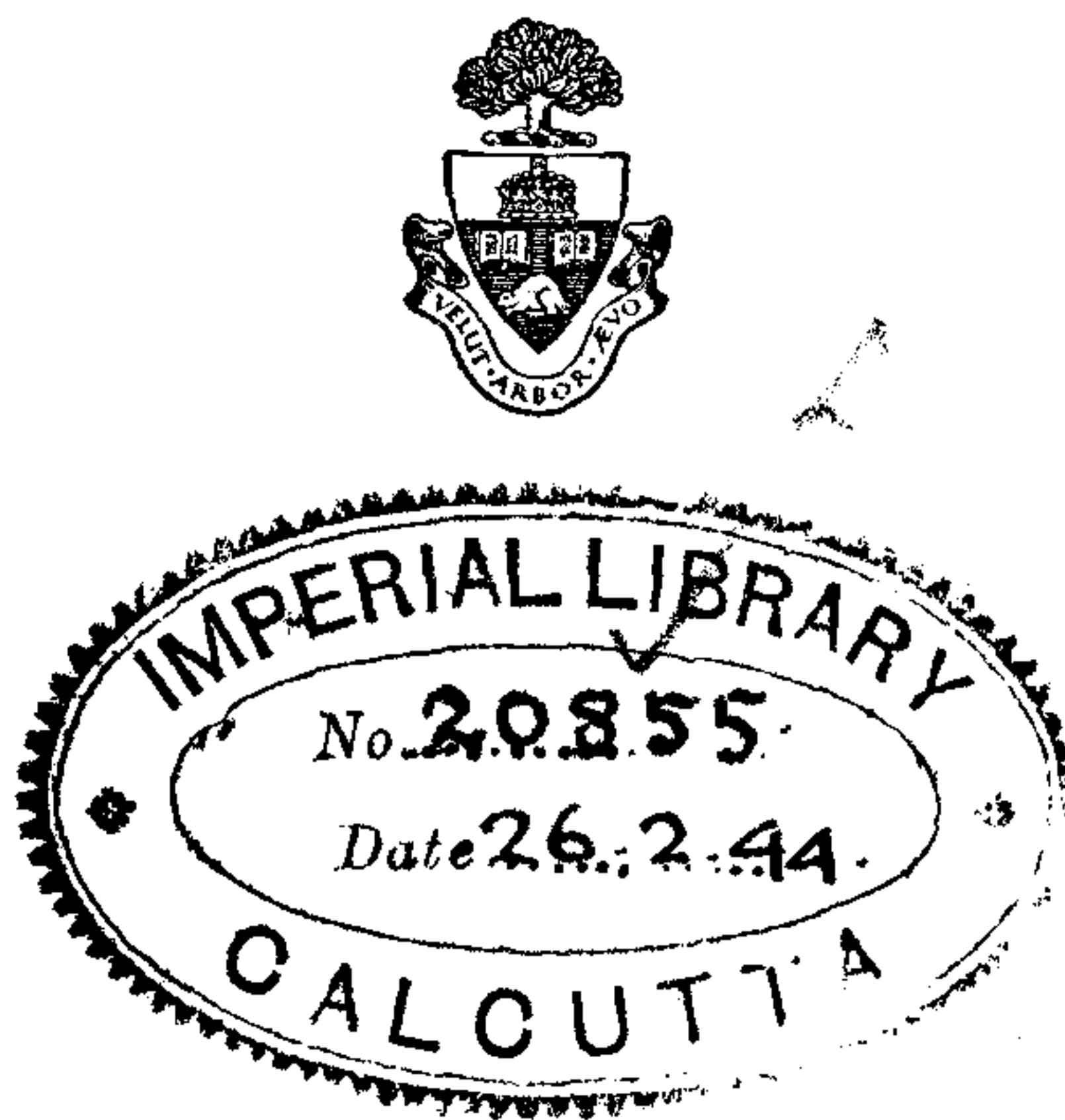


PROBLEMS OF MODERN GOVERNMENT

Edited by
R. MacGREGOR DAWSON

With a foreword by
THE HON. and REV. H. J. CODY



THE UNIVERSITY OF TORONTO PRESS
TORONTO, CANADA

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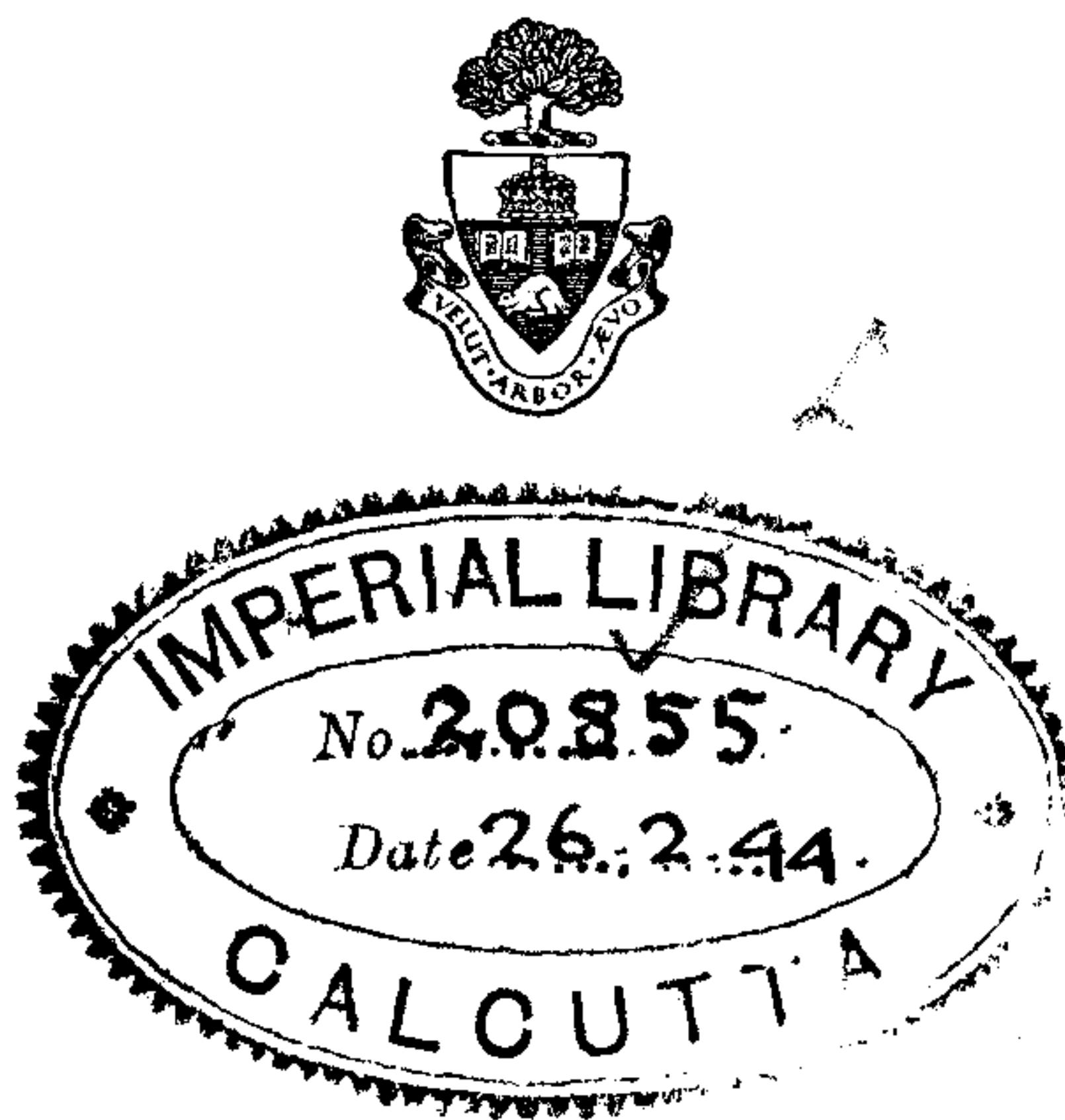
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1948.10.21.

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POLITICAL ECONOMY SERIES, No. 12

LONDON:
HUMPHREY MILFORD
OXFORD UNIVERSITY PRESS

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PRINTED IN CANADA

A FOREWORD

LONG ago classics and mathematics formed the staple of our higher education. Gradually modern languages and the physical sciences gained a footing. More recently the social sciences have made their way into the sacred circle of learning and are seeking to justify their inclusion in an intellectual discipline. I believe they are making good their claim. In *all* intellectual training I should personally like to see a substantial portion of the humanities.

The physical sciences seem obviously to have practical applications, and those applications have often had spectacular results in benefiting mankind and promoting the material welfare of the world. Financial support for the teaching and development of these has seldom been lacking. But the social sciences, while perhaps less definite than the physical sciences, must be granted a place not less vital. Human beings and their mutual relations and their organization into groups present problems of immediate urgency. The Great World Wars and the periods of reconstruction that follow violently force these problems, which are always with us, on the attention of governments and individuals alike. We may win conquests over nature but we have not yet conquered ourselves. The human being is still the centre of interest and of well-being. Therefore I put in a plea for recognition of the importance of the social sciences, for the securing of well-balanced and enthusiastic teachers of the same, and for the financial support of research work in this whole field. If social problems are to be solved, there must be a careful collection and collation of the facts, a courageous demonstration of the inferences therefrom, and a resolute effort to apply these to the human situation. I believe that in the future all the mental disciplines that may fairly be subsumed under the term "the social sciences," which indeed have an essential unity, will demand and receive more attention in academic curricula.

Of these not the least valuable in a world where the problems of government grow daily more complex is political science. Last year the University of Toronto sought to focus public attention on its increasing

importance and on the part it must play in dealing with modern political and economic tasks. The most effective way of doing this seemed to be the provision of a course of public lectures, given by various authoritative teachers who would deal with topics in which they themselves had special interest. Under the general title "Problems of Modern Government" each speaker chose his own subject. As American and Canadian problems are largely similar and as relations between the universities of the two countries are so cordial, it was desirable that speakers should come from both the United States and Canada. The American lecturers were Professor C. H. McIlwain of Harvard University and Professor Arthur W. MacMahon of Columbia University; the Canadians were Professor J. A. Corry of Queen's University, Professor R. A. MacKay of Dalhousie University, and Professor H. McD. Clokie of the University of Manitoba. Two papers are added by Professor Alexander Brady and Professor R. MacGregor Dawson of the University of Toronto (who also contributes the Introduction). This book, made up of these addresses and papers, presents a fairly accurate cross-section of the questions which are engaging the attention of political scientists in both the United States and Canada, and illustrates the importance of the place which the study of government must command today and in the future.

Political science is not a new creation. It is concerned with the citizen in his relation to the state; it deals with the nature, form, and functioning of government. It is really as old as reflection upon organized society. It embraces a study of the formation and general constitution of that highly complex organism, the state; of the different polities of different nations; of the administration of government and the principles and methods of legislation. The illustrious names in its early history include those of Plato, Aristotle, and Cicero. Aristotle may really be called its classic founder. According to him the highest of human organizations is the state and its supreme aim is to aid in producing the good life: the normal and right constitution is one that is framed and administered for the common good. A constitution, conceived in the exclusive interest of any *class*, even though it be a majority, is in Aristotle's eyes, wrongful and perverse. The force of this opinion is recognized to this day by every publicist who considers the representation and protection of minorities and the perils of a totalitarian state—the antithesis of a true democracy which places sovereignty in the whole body politic and not in any one class. The ancient complement to Aristotle's *Politics* is Plato's *Republic*. A cold analysis of actualities needs some balance

and inspiration from a glowing presentation of ideals. The *Republic* has abiding value in its power to awaken the most complacent citizen or statesman to a consciousness of the boundless range of the aims and purposes of a worthy society. Modern political science has to deal with nations of type different from the ancient and usually of a size which the Greeks would have regarded as certain to cause most of their difficulties. Political theories today must include such types of government as Fascism, Nazism, Communism, Socialism, and Anarchism.

The freedom-loving peoples of the world are today fighting for democracy, not as a mere system of government, but as based on those spiritual values of liberty, justice, mercy, truth, without which life is not worth living. Unless democracy is based on the religious principle of the value of the individual soul to God and on the moral principle of the sacredness of personality, it has no guarantee of permanence. George Bernard Shaw caustically defined democracy as "merely the substitution of the incompetent many for the corrupt few"; but that is his jest. A true democracy has a moral basis; it implies an educative process; it lays greater responsibility on the individual citizen than does any other form of government; it depends on the intelligence, integrity, and active interest of the individual. If citizens of character disappear, democracy will collapse. It therefore requires cleansing as well as defence. "He who can spiritualize democracy can save the world" (Mazzini).

One problem of modern government is to preserve the interest and the influence of the individual citizen. Can he do anything beyond voting for a representative in a legislative assembly? Can that representative exercise any influence independently of the government in power? What check can be placed upon the absorption of power by a Cabinet or by an inner committee of Cabinet? In days of peace these questions must be answered to the general body of citizens, if a vital democracy is to remain.

During a war the government must assume virtually absolute power. Professor Dawson in his introduction rightly says: "The state has become the supreme co-ordinator, the final arbiter, the enlightened leader and partner in all phases of social and economic effort. . . . The positive state is . . . here to stay." Is it at all likely that after the war governments will gracefully and wholly retire from fields of activity they have so long occupied? Even before the war this tendency of governments to intervene in non-legislative areas has grown apace. One of the moot points of political theory and practice has been how far a government is

A FOREWORD

justified in interfering with the free action of the individual, in the industrial world, for example. John Stuart Mill was the apostle of the theory of laissez-faire, a theory which would leave the sphere of voluntary action and individual initiative as large as possible. But today the opposing theory of government intervention, control, or supervision in practically all conceivable social relations has been practically accepted. We have Acts regulating the industrial and commercial life of the people and a veritable army of officials administering these Acts. I believe that to a large extent government supervision, planning, or ultimate control will remain; these functions will be defined not as intrusions into but as co-operation with the industrial world. For what then shall we prepare? The universities have a great opportunity to train men and women for public administration and service. The state will need officials who have knowledge, wisdom, and probity. As administration becomes more complex, the greater will be the need of the trained and educated administrator. Perhaps here is a call to our universities and a challenge to high-minded youth.

Never was a knowledge of the basis, character, and aim of government more necessary than it is today. We are champions and trustees of freedom, we believe. We must remember that freedom was never an easy way of life; for by its very nature it lays on the individual a burden of decision and of action. We must accept the disciplines as well as the freedoms of democracy; these disciplines we must impose upon ourselves.

H. J. CODY

President's Office,
The University of Toronto,
October 31, 1941.

INTRODUCTION

THE majority of the following articles have recently appeared in the pages of the *Canadian Journal of Economics and Political Science*, and five of them formed part of a series of lectures given under the auspices of the Department of Economics in the University of Toronto. I have been asked to convey to the writers the appreciation of the editors of the *Journal*, and also, on behalf of the Department, to thank them for their contributions to the study of political science in Canada.

The teaching of political science in the Dominion, despite a history of over fifty years, is nevertheless still in its infancy. Some universities scarcely recognize it as a separate study, and offer it somewhat furtively as an unimportant part of such allied subjects as philosophy and history. Others, with greater daring, print it openly and under proper headings in their calendars, but then entrust the courses to the rather casual ministrations of instructors whose chief interest lies in a different field. A select group of universities with ampler means or, perhaps, greater discernment have accorded the subject not only separate recognition, but have also placed it in the hands of a special department or of professors who are able to devote their time and attention exclusively to its particular problems. But even in these discriminating havens of culture the prominence given to political science is of comparatively recent growth, and other Canadian universities have hitherto had little difficulty in curbing their eagerness to follow so worthy a precedent.

Several factors have contributed to this retarded development. The most outstanding of these has been the past tendency of Canadian universities to copy British academic traditions, a tendency which in this instance has resulted in keeping political science in a subordinate position. In Great Britain during the last century politics formed a useful but minor adjunct to the courses in classics, philosophy, history, and law, and it was this model which not only provided the inspiration for the early Canadian prescriptions,¹ but also governed much of their

¹C. B. Macpherson, "On the Study of Politics in Canada," in *Essays in Political Economy*, edited by H. A. Innis (Toronto, 1938), pp. 147-65.

INTRODUCTION

subsequent history. The same tradition likewise led to the study of politics in Canada being largely confined to those special branches which fitted most readily into the traditional British schools. Political theory and philosophy thus received the major emphasis, while the structure and functions of government were almost completely ignored. In recent years, however, both this limitation on the study of politics and its particular bent have begun to change, owing in a large measure to a transformation within the old source of inspiration, Great Britain, and also to the growing influence of the United States on Canadian curricula. Led by the London School of Economics the British universities have given a new prominence to political science and public administration as vital subjects in their own right, while both British and American teachers have emphasized the study of structure and the more practical side of government. The effect of this double pressure on the Canadian teaching of political science has been definitely apparent, although even the most optimistic could scarcely be impressed with the cautious progress which has so far been made.

The original position of inferiority which political science occupied in relation to certain other studies in Canada tended to be perpetuated by the very nature of the subject itself. Political science is one of those branches of knowledge which to an unusual degree fringes on and merges with several others, and each of these allied groups has not unnaturally been reluctant to abandon any segment of its own preempted circle of authority. Constitutional history has thus been retained or absorbed by the historians, constitutional law by the law school, political theory by the philosophers, taxation and public finance by the economists, while other social sciences have held on tenaciously to any odd fragments that have come their way. This natural affinity of subject-matter, aided by the formal arrangement of courses, contrived to keep the various parts of political science scattered and under the control of others. Its teaching was almost invariably placed under the care and protection of some sister subject of greater authority and prestige, and sisters are not always, unhappily, the most altruistic of guardians. They cannot in the very nature of things be entirely disinterested in their ward's future nor can they advance the other's cause with the same urgent conviction which they bring to their own. Their welfare is too closely interwoven with the questions at issue; their prestige may be dimmed or their scope of action restricted; they cannot feel the sheer necessity of supporting what must be, to a degree at least, an alien faith and a rival cause.

To these academic difficulties Canadian conditions have added another in an especially acute form—finance. New departments or new chairs of political science could not be established because the necessary funds were lacking; and here, too, the close association with other subjects became an undoubted handicap. The elder sisters had their own demands to meet, and while in all honesty it must be admitted that most of these demands were necessities rather than luxuries, yet the form as well as the size of the family budget were not designed to encourage new outlets or promote the setting up of separate establishments.

But this is obviously not the complete story. Other studies, quite unknown fifty years ago, have since then appeared in large numbers on the university curriculum; many new departments have been established during this period at every university in Canada; and funds have been available on a most generous scale for the endowment of a host of academic projects. Thus while it is true that the development of political science has been retarded by such factors as those mentioned above, yet it is evident that this alone is not a sufficient explanation, for other subjects have been able to surmount similar handicaps by arousing a genuine public interest and support. The progress of many of the natural sciences, for example, has been phenomenal, but much of it has been made possible by the theatrical nature of their achievement and its grip on the public imagination. The social sciences have not been able to present any results as concrete or as satisfying; but such subjects as history, by the comprehensiveness of its field, or economics, by virtue of its real or imagined practical usefulness, have been able to hold their own against aggressive competition. In this struggle for continued recognition, political science has been definitely worsted. Political theory was not considered to be practical enough, inasmuch as it dealt either with obsolete conceptions or ideas which everyone was disposed to accept without question. The study of governmental structure was apparently thought to be little better: the basic constitutional lines were already laid out and generally agreed upon, and no university course could be expected to shed much light on what was best obtained by hard realistic experience.

Indeed, for many years the Canadian people seem to have been indifferent to the study of political questions as such. They were keenly interested in their history and their law, but they thought of their government as primarily embedded in that historical or legal

environment, and they rarely considered it apart from that environment. They dreamed of a great Dominion, but it was a Dominion primarily conceived in terms of economic development and prosperity, of population, of the fur trade, of wheat fields, of fisheries, or of manufactures. In earlier days questions of practical political science were of vital consequence to Canadians—the long effort to secure responsible government and the creation of the Canadian federation being the outstanding examples of issues which were able to arouse the most intense interest. The Canada of Baldwin, Macdonald, and Howe did not need to be reminded of the importance of government and its possible effects on human happiness; but once the fundamental political issues were faced and settled, politics lost its pre-eminence in Canadian life and much of its distinctive character, save for a temporary obsession on the subject of imperial and external relations. Political events became with the years more and more identified with economic events, and political questions more largely concerned with the resolving of economic difficulties, without altering or even considering the fundamental individualistic approach to most problems of this kind. Politics had, in short, become chiefly the channel through which important decisions on economic policy could be conveniently decided.

This slackening of interest in political questions as such has very definitely slipped into the past. No one can live through the present acute conflict of ideologies on a world scale and remain unmoved as to the fundamental political issues which are now involved and which may continue to occupy the attention of the world for a long time to come. Political problems, moreover, have not only become of paramount importance, they are now more comprehensive, elaborate, and far-reaching than ever before: the state has become the supreme co-ordinator, the final arbiter, the enlightened leader and partner in all phases of social and economic effort. Political and administrative questions are becoming increasingly complex, demanding a more extensive knowledge than we yet possess, a more skilled and elaborate political organization and technique than we have yet experienced. The positive state is, beyond any reasonable doubt, here to stay, and no one can live in such isolation that he can be indifferent to it or ignore the multitudinous problems to which it will give birth. The place and scope of the modern state, the preservation of individual liberties, the structure of the governing agencies, the intelligent direction of the national effort in all its ramifications—these are more real and more necessary than ever before,

and the public cannot fail to become increasingly aware of their importance and, if democracy is to survive, increasingly concerned in dealing with them. The effect of this modern emphasis on the study of politics is apt to be two-sided and superficially contradictory. Political science will doubtless continue to assert its own individuality and grow within its own boundaries as a separate subject, yet at the same time it will be compelled, as the essential unity of the social sciences becomes increasingly apparent, to reverse this development and link itself more and more closely with the other members of the group. In short, having recently secured its emancipation, it will again go back to many of its old associates; but with a significant difference. Whereas political science was previously a very undistinguished part of the household, it will now stand on terms of equality with the other members; indeed, it will probably become the essential intermediary which will bring and hold together many of the diversified yet allied interests of the social sciences.

R. MACGREGOR DAWSON

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THE PRESENT CRISIS OF CONSTITUTIONALISM

C. H. McILWAIN

NO one can deny that the present struggle is one of the most profound and certainly the most far-reaching in the recorded history of the world. There is not a corner of the globe, civilized or uncivilized, that will not see the effects of it in the everyday life of every man, woman, and child. The outcome will affect every one of us as it will even the native tribes of Africa and Borneo.

We, on our side, are usually said to be defenders of democracy against the foe of totalitarianism. We usually define our position as the maintenance of democracy. But I think we are defending something more fundamental and even more important than democracy. Democracy may be the form of government best suited for that defence. We think so, and we are maintaining it for that reason. But this democracy is only the means—we hope and trust it is the best means yet found—of ensuring something far deeper and far more important than this democracy itself. That something is the sacred right of a man to be a man. It is not the fashion any more to speak of the "rights of man," but nevertheless, under whatever new name we put it, it is that for which we have always fought, for which we must fight now, and for which we shall have to fight in the future. Under totalitarianism the state is all and man is nothing. Every member of the state is moved from above. He has no rights, not even the right to his own thoughts if they could be known. It is a system of compulsion and terror, of force and of despotic power. It is only half the story, then, if we say we are fighting for democracy—it is far less than half of it. We are fighting for the right to be men, and we are fighting against a despotic form of government which denies us that right. To put this more concretely, we are struggling for limitations of despotic will, to secure our freedom as individuals in all those things in which this freedom does not encroach on that of others. We are battling for limited government and against unlimited governmental authority; for we want government to leave

some corners of our life to ourselves in which we may speak and act and worship as we please. In short, we do not want citizenship to be a synonym for slavery. If democracy is likely to secure this, then we are for democracy; but freedom is far more precious than self-government, and self-government must prove itself able to maintain that freedom or it may turn out to be a failure. So I should prefer to call our present world struggle rather a struggle to maintain constitutionalism than a mere struggle for democracy. It is a life and death fight to maintain some limits to arbitrary will; it is a contest between will and law. Totalitarianism rests on the assumption that some men or some races are by nature so much better than all others that the good of the whole requires that these men or these races alone shall rule and shall regulate the lives of all the rest as slaves. The present connection in Germany between totalitarianism and the tribal myth of German superiority is by no means an accident. Some such myth, even one as fantastic and historically false as this, must be assumed if total domination is ever to be justified. This is why I have ventured to give the title of constitutionalism rather than democracy to the opposition to totalitarianism about which I propose to make some rambling remarks.

The present world crisis, more serious than any other that has happened in our memory, must have some effect on our theories as well as on our practice. And it has had such an effect. It has compelled us to compare our own ideals of liberty with Germany's. It has forced us to analyse and to defend our own conception of that liberty. And it would seem to follow that this must involve some examination of the past growth of these conceptions of ours as well as of their present nature. All this is the result of the unity of all history. We cannot rightly evaluate the events of the past without considering their outcome in the present, nor can we truly measure the events of the present except in part by a consideration of their roots in the past.

All history, as Maitland said, is "a seamless web" and we are a part of it. Every part has some bearing on every other part. If this be true, what should be the effect of these recent world-shaking events on our conception of past constitutional developments? I think they should rightly affect our interpretation of the past as well as our convictions about the present and our ideals for the future. Should the present world events, then, cause any change in our estimates of past history? If history is one, they should. It is some of these changes that I think we must make in our historical estimate to which I should like to call

attention; for to me these events call for nothing less than a shifting of much of the traditional emphasis in the history of our institutions. For example, we have all been brought up on the notion of Germanic freedom as almost the sole source of all our modern freedom. All our political liberty, it has often been said, has a Germanic origin.

The books that influenced us three-quarters of a century ago were such books as these: Georg Waitz's *Deutsche Verfassungsgeschichte* (1844); G. L. von Maurer's *Mark-, Hof-, Dorf- und Stadtverfassung* (1853); Friedrich Thudichum's *Die Gau- und Markverfassung* (1860); and the books of Rudolf Gneist, such as *Englische Verwaltungsrecht* (1866), or his *Selfgovernment in England* (1871). In England the influence of this school of historians seems to have been hardly less than in their native Germany. One might cite especially the influential works of Edward A. Freeman and their popularization by John Richard Green. Even Bishop Stubbs, though more cautious, was deeply affected by these views. Nor were they confined to the European continent or to England. In America, Professor Herbert Adams and the historical school which he established at Johns Hopkins University made them almost the orthodox historical doctrine of America, at least for a time. The substance of these views is a monopoly of the Germanic origin of our free institutions. That is, first, that our liberties are in origin almost solely Germanic; and secondly, and more important for us, that this theory of Germanic origin is amply sufficient to account for the whole subsequent persistence of these liberties to our own day. Here I propose to give a qualified assent to the former of these conclusions, but on that very account flatly to deny the latter. This attitude, I must confess, is largely the result of recent events in Germany itself which, as I said above, if they are a part of the whole sum of historical development, cannot be without effect upon our estimate of it all. We all know what Germany has done since 1914 and even before 1914. Since then, she has destroyed all constitutional guarantees of individual liberty. She has asserted this on the principle of the superiority of "German" culture. She has repudiated all the tradition developed through thousands of years in religion, morals, and government. In this process, she has repudiated Roman law because of its universal character and because that universalism stands in the way of her own tribal, heathen, lawless culture. From these facts this question naturally forces itself upon our minds: if our culture or our liberty is Germanic, why then should Germany herself, the supposed home of this liberty, be now its greatest foe? That

question cries for an answer, and the traditional history cannot answer it. Suppose we admit provisionally the importance of early Germanic liberty, does not this very fact further emphasize the other fact that Germany herself has been the first and the most extreme in the repudiation of this liberty? Germany today is liberty's greatest foe, and can all this be owing to the action of a few demented adventurers? Considerations such as these, I submit, call for a shift in our emphasis. It is not enough to prove the liberties of primitive Germany; we must go on and ask why it is Germany above all others that repudiates it. We must turn our main attention away from the early origins to the later maintenance of our constitutional liberty. The very fact that Germany may be their original home serves only to accentuate the fact that Germany has now become their chief enemy. The main task of constitutional historians, then, is not to account for these origins, it is to account for the persistence of liberty where it has persisted. This involves a shifting of our main attention in constitutional history from the origins of liberty to its later struggle for existence.

Among other things, I think this will involve an entirely different view of the importance of Roman law in our estimate. It will fix attention even more exclusively than before upon developments in England. It will entail a different view of feudalism from the one which seems to be traditional. It will heighten the relative importance of the sixteenth and seventeenth centuries in the history of our constitutionalism. In short, I believe the awakening caused by Germany's twentieth-century repudiation of liberty must cause us to shake up and modify our estimates of the whole development of our free institutions. We must look less to the origins, we must pay greater attention to the preservation of liberty.

Now I must try to justify some of these rather heterodox opinions. In the first place, I would not deny, of course, the importance of early Germanic liberty, or that our own is largely, though not wholly, Germanic. There are too many evidences that make these facts clear, such as the nature of the surviving Anglo-Saxon law, and above all the ancient English County Court with its representative institutions. One cannot but agree with Hallam that the County Court is probably the most characteristic, if not the most important, of English constitutional institutions, nor can one deny that the origins of this court are mainly Germanic. Nor would I deny the widespread influence of the early Germanic free institutions. The evidence for them in medieval Spain

and France is as conclusive, if not even more conclusive, than for England or Germany.

But if I find these liberties, once so widely spread, now blotted out in all countries save England, I must ask the reason why. If every country but England, even Germany herself, has renounced these liberties, I cannot account for England's unique retention of them on any mere theory of Germanic origin. The explanation must be something different, it must lie somewhere else. We must look beyond these mere origins to the causes of this retention. We must, in short, change our emphasis from that of the older constitutional historians. If this liberty, even though Germanic in origin, was later lost everywhere except in England, such a fact must point to a cause of its retention which we should term "English" rather than "Germanic." However it is not enough to do this. If this constitutional liberty persisted in England alone, and if this persistence is not owing to Germanic origin, we must, if possible, try to determine what its true causes were.

They are not to be found, I think, where they have been so often found, in the Germanic strain in the English blood. Culture, not blood, is the explanation of a country's institutions. England retained and developed her constitutionalism largely as a result of the strong monarchy of William the Conqueror and his immediate successors, a monarchy strong but not "absolute," which in its modern connotation means despotic. It was a feudal monarchy, in which the very strength of the monarch entailed the co-operation of his vassals; and this co-operation at a later time, when new classes of the people had emerged and feudal institutions had grown into national ones, formed the basis of later self-government. This is not the only contribution of the strong monarchy of the Normans and the first of the Angevins. To their administrative reforms we must attribute the "common" character of the royal authority in England, the common administration of justice, and ultimately the common principles of law which this common administration at length brought about. Anyone who studies the whole history of our common law, particularly that part of the history in the seventeenth century, when its principles were endangered by the encroachment of arbitrary will, must appreciate the great part that our common law has played as a bulwark of private right against despotic power. The member of James I's first Parliament who called it "the wall betwixt the King and his subjects" was not exaggerating its importance. This law in the critical period when it was made "common" through the administrative

reforms of the King and the activity of his judges, was of course composed of ancient custom whose origins were without question largely Germanic. But the forces that fused the varying customs of England into a law common and universal were the administration of the new monarchy. In the whole result of this combination of Germanic custom and royal administration, the importance of the latter has not been stressed as much as that of the former. Without the uniform writs of a Henry II and the itinerant justices of the time, English local custom might well have remained local, even though Germanic. In this new administration and the common law resulting from it, I find the political effects of the moulding forces of administration to be no less important than the mass of local customs with which the administrators dealt.

If one now should look at the writings left by these administrators, he would find evidence of the influence of factors in addition to Germanic institutions. Among these is the influence of Roman law, about which we need more of a revision of our notions than concerning almost any other part of our political tradition. For instance, the political principles that Glanvill saw in Roman law are not those of the modern historians. He found its central principle in the great maxim of Papinian, "*Lex* is the common engagement of the republic." He did not find it, as we moderns usually do, in the later Roman maxim of despotism, "What has pleased the prince has the force of law." Nor is this all. To Glanvill and his successors for a hundred years, this Roman law, interpreted in this fashion, constituted the true political principle in any free state, and it summarized the principles that these men believed to exist in their own day and in their own country of England. It was only later, in the last centuries of the Middle Ages and the centuries following, that the isolation of England broke this continuity of Roman law and gave rise to the notion, common since the sixteenth century, that Roman law is synonymous with despotism and that England has had none of it in any part of her history. A revision of these things is called for. The testimony of Glanvill and Bracton as to the nature and importance of Roman law in our own constitutional development is too plain to be contradicted. A few investigators have given that evidence sufficient weight. One of the earliest was Biener and one of the most important was Güterbock, who gave us the first scientific study of Bracton's great law book. But these sound beginnings have never been followed up adequately, and the prevailing note among the modern historians of our institutions is the despotic influence of Roman law in all European

governments, including the beginnings of our own. They have fixed their attention almost exclusively on the sixteenth century when despotic monarchs cited some carefully chosen passages to bolster up their despotic measures; they have forgotten in their discussion of the later Renaissance the importance of that medieval Renaissance which, for our law and politics at least, is more important than the later. That early revival came in time to influence our law and politics at the most critical period of its growth. And in the revival Roman law played no small part and if we may trust contemporary evidence instead of later tradition, that part emphasized the principles of constitutionalism, not those of despotism. Glanvill and Bracton considered the Roman and the English principles more alike than unlike. In both Roman and English law they found an immunity of private right from governmental influence. It is a far cry from their praise of Roman law as "the perfection of reason" to the narrow interpretation of that phrase made by Sir Edward Coke in the seventeenth century.

It was mainly in the period of the Renaissance that these medieval principles of constitutionalism met their greatest threat. They were threatened in England as well as on the continent, but in England, and in England alone, they survived this threat to last into our own day. It is this unique survival, this English survival of constitutional liberty at a time when all others were giving it up, to which historians ought to devote their principal study. Out of the controversy arose the later popular control of government which in our own day has widened out into a representative democracy. All this is English, and as a native development it is English alone. Since the French Revolution the Continent has copied these English institutions but, since 1914, with few exceptions it has repudiated them voluntarily or under pressure. Considering these developments in their entirety, one is safe, I think, in saying that England's great, even unique, contribution to constitutionalism is no mere Germanic origin which she shared with so many other countries. It is her retention, her sole retention at a time when others were repudiating it, of the principles of constitutional government. This is the change in emphasis for which I have been arguing. The great problem of present-day politics is the eternal problem of politics—the struggle between will and law. England's great part in that struggle has never been so clear before, as Germany's repudiation of constitutionalism has now made it.

DEMOCRATIC POSSIBILITIES IN A TOTALITARIAN WORLD

H. McD. CLOKIE

IT may be thought that to give consideration now to the possibility of democratic government in a totalitarian world is an idle task. Whether there is to be a future for democracy rests in far more capable and determined hands than ours, and it may seem that there is little we can do beyond cheering on our defenders, assuring them of our confidence in their victory, and consolidating for them a whole-hearted support on the home front. In these perilous days there is a temptation for us to regard it as an impertinence to take stock of our position while the issue is still in the balance. The importance of action is so great that we tend to turn from the contemplation of ends and objectives to concentration upon the effective means of execution, to those practical arts appropriate for the mechanized warfare of an industrialized age. In a similar period of war and strife, even Milton, the great defender of the spoken word and printed page, could also renounce the "inglorious arts of peace," proclaiming:

'Tis time to leave the books in dust
And oil the unused armour's rust.

Yet, as we look back to the civil war of the eighteenth century, there are two things which should give us pause. One is that for Milton a long period of thought had settled in his mind certain firm convictions of the issue at stake and the direction which action should take. And secondly, even more important, is the serious doubt that Milton must have had later regarding the wisdom of the policy being taken by the man of action, Cromwell, whose praises he had sung. Was the establishment of the Protectorate the object which the Puritans and Parliamentarians had in mind? Evidently not. Was it not Milton himself who declared in dismay that "presbyter" is but "priest" writ large? Must he not secretly have considered that "Protector" was but "Prince" writ large, too?

It is essential, then, that the action that we must undoubtedly take now should be constantly tested by reason and discussion, that our action

may be prevented from being purely destructive and may, on the contrary, be made to subserve the purpose for which it is invoked. This is particularly true of the present contest, for on every side we are told it is an ideological struggle, a conflict of values, a contest between two theories of life and of human society. It is this explanation which very largely creates the modern confusion and social disintegration. A simple conflict between races or nations we can clearly understand. If it is whites against yellows, German against British, we have no choice but to take our place in our appropriate category. If it is a contest between the haves and the have-nots, a struggle for empire, then there should be no difficulty in determining one's place. But if the world is torn by an ideological contest, such as did occur in the sixteenth and seventeenth centuries in Europe between Catholicism and Protestantism, the position becomes both more complex and more demoralizing for all concerned. Ideas can and will cross national boundaries; they are not confined by the words of one language; they know no colour bar. There are no ideas so fantastic or so foolish that they will not find adherents in every part of the world. So, if we really believe this is basically an ideological struggle, we can expect English, French, Canadian, and American peoples, as well as the German, Austrian, Italian, and Russian folk, to be split asunder by the varying attractiveness of the different ideologies.

It is not my purpose to discuss the foundation of the present ideological conflict. It suffices for us to recognize the existence of numerous cross-currents of opinion which influence the minds of many people and serve as additional disintegrating forces in the midst of other world disorders. We need only note that these disturbing factors are closely connected with democracy and totalitarianism. In early days we were accustomed to speak as though there was an inevitable progression from political to economic and social democracy. Nowadays, on all sides we hear it alleged variously that we have had too much democracy, too little democracy, or the wrong kind of democracy. And more specifically we hear it advanced, in a mystically dogmatic form, that, whatever democracy was, it has expired with a decaying capitalism, that the "wave of the future" is carrying us on to some anti-democratic form of totalitarianism. Few words have been more bandied about than democracy, and the refinements of meaning that have been placed upon it would fill a dictionary; and, on the other hand, few long words have come so suddenly to such wide popular use as totalitarianism without any consideration being given to its primary meaning. Let us avoid getting involved

in all complications by keeping to the simple and perhaps common sense view of democracy, namely, that it is in some special way connected with majority consent and veto and with popular participation in government. This is to take democracy as being primarily a form of government—without considering for what purposes the public uses its powers. Totalitarianism, next, we can take not as primarily a type of government, but as a social system—that particular social order in which a completely co-ordinated effect is secured under state control. Looking, then, at democracy as a form of government, and at totalitarianism as a social system, our question becomes this—is democracy ruled out with the establishment of a totalitarian society? What is the possibility of conducting a democratic government in a world daily becoming more and more totalitarian? Must a totalitarian social order be accompanied by a state of dictatorship?

We may commence our consideration by observing the very urgent issue which has been facing our neighbours, the Americans, for several months past. They have before them a problem which must be met and met immediately. The process of the crystallization of opinion has been one of intense interest to us. The question that has been asked to the south of us is this, Can democracy be maintained in a country which enters upon preparation for total war or total defence? We in Canada, where the die is already cast, may perhaps smile at the naïveté with which the question is posed there, but we must nevertheless appreciate the fundamental nature of the decision they have to make. They have indeed given true testimony to the depth of their democratic foundations by the honest, frank, and forthright fashion in which the subject has been debated. If one has followed the discussions of the Chicago Round-table or of the Townmeeting of the Air, and has listened to Senator Wheeler and Governor Lafollette speaking for the isolationists, to Mr. Norman Thomas speaking for the socialists, or has heard elsewhere Colonel Lindbergh, President Hutchins of the University of Chicago, and Ambassador Kennedy uttering their recurrent doubts, it should be evident that one thread binds all these together. Though they speak from different conceptions of justice, democracy, and peace, one sentiment is common to all these I have named—that of all evils, entry into the war is the greatest because it will indubitably mean the loss of the democratic system in America. This indeed is the significance of the debates on the extension of the President's powers to enable the lease and lending of aid to Britain.

We have no concern at this moment with the American position, strategically or otherwise, with respect to this particular war; but we are bound to consider this specific point—that entry into this war, as indeed it would seem, into any other modern war, carries with it the abandonment of democracy. The Americans are facing the possible antithesis of democracy and totalitarianism. There is little doubt in the minds of many observers that they are right in equating modern total war with totalitarianism. Modern war, for an industrialized state, involves such an enormous extension of collective effort, regimentation, and synchronized activity that it does not differ essentially from the totalitarianism we have observed in other countries, the dictatorships. The "isolationists" are right; getting into war brings inevitably the totalitarian consequences of total war. But is dictatorship one of these consequences? Are the isolationists right in crying, Stay out of war, that is the only means by which we can preserve our democracy?

Fortunately, I am sure, we can rely upon the sound judgment of the American people not to be taken in by any such nonsense. For it would imply that democracy cannot fight a modern war, and the same implication is carried both as to a war of defence as well as of attack. To accept this view would be to agree that democracy is a system of government suited only to times of peace, and is a form which crumbles at the outbreak of hostilities. Usually the position is not thus baldly stated. The non-belligerents vociferously deny their pacifism and declare they stand for defensive wars only. But defensive wars are in exactly the same position as aggressive wars. It is *any* total war, not simply *aggressive* war, which creates the totalitarian condition they profess to fear so much. If it were true that total war destroys democracy, then the only protection for democracy would be to give up all efforts at defence—a proposition so preposterous that one would think it indefensible. Any-one holding this opinion must agree with the statements of Hitler, Mussolini, and Stalin to the effect that democracy is an out-moded, decadent form of government, inappropriate for the present age. It would be as if they said they were, not "too proud to fight," but too incapable. In that case, of course, the "New Order" would not be long in spreading from Europe to the Americas.

Let there be no misunderstanding about this. The question under discussion is not whether the United States should or should not enter the war; the issue is whether she can do so and remain democratic. No one can be more vitally interested in the preservation of American demo-

cracy than we are in Canada, for it would be difficult, if not impossible, to retain our democracy with a dictatorship to the south. Nor should it be thought that an extreme case has been presented as a straw and easily knocked down. The Americans have a real and urgent problem to face, and one which is worth considering a little further, since it sheds some light on one phase of our subject. The following comments are by no means original; they are well understood by political scientists, who, however, often forget their significance.

The American system of government was conceived and devised with certain very definite concepts of the nature of government.¹ These concepts were derived from a study of the British constitution and from their own experience of its application to colonial government in the eighteenth century. In general terms, it was the accepted view that the glories of English constitutionalism sprang from the institutionalized balance of powers—executive, legislative, and judicial—each of which was to be independent in its own special field. Without this separation of powers, they were assured on the authority of Montesquieu, tyranny must result. This was the public explanation of the events leading up to the Declaration of Independence, which document is a specific and detailed denunciation of King George III's tyrannical usurpation of legislative and judicial powers. So the American constitutional system was constructed to preclude such a situation arising in America. This they accomplished by dispersing the powers of government in the noted fashion among President, Senate, House of Representatives, and Supreme Court, making doubly sure by introducing checks and balances and a Bill of Rights. In this manner the government was limited both in extent of its powers and by such a degree of mutual interference as would reduce its effectiveness in operation.

The whole system was based upon the characteristic eighteenth-century dogma that all government is an evil, though a necessary one; the necessity being the danger to private rights (meaning property) when there is no law, the evil being the capacity governments thenceforth possessed of infringing these very rights. To most people now this conception of the foundation of government appears quite ephemeral. Yet British and American writers had all agreed—Locke, Blackstone,

¹Of the numerous expositions published since the *Federalist*, reference need be made to but three of this century: J. A. Smith, *The Spirit of American Government* (New York, 1915), H. L. McBain, *The Living Constitution* (New York, 1927), and A. N. Holcombe, *The Foundations of the Modern Commonwealth* (New York, 1923).

Bentham, Adam Smith, Hamilton, Madison, Mill—even when in utterest disagreement on other points, that governments require restraints in order to preserve private rights. None of these men held a democratic theory; all assumed a theory of government based on the protection of the propertied classes. In common they hated and condemned democracy, for it was the many (who were, of course, the poor) that might sweep away the privileges of the few (who were, of course, the rich).

The anomalous thing is that by the middle of the nineteenth century democracy had become the acknowledged norm of American social life and the accepted theory of American polity. Yet the democracy inherited restrictive institutions of this earlier system. It is unnecessary to argue the merits or demerits of Mr. Roosevelt's New Deal, but it will be evident, from the fact that the question of its advisability or not had become entangled in constitutional issues, that this same problem existed even before the outbreak of this war. How could Americans make their government constructive, active, and positive when they had set up a confining and restricting system? How could they devalue gold, impose price regulation, limit farming, tax the rich for the poor, create minimum wages, and coerce employers under such a scheme? While Mr. Roosevelt was capturing Congress he lost the Supreme Court; while he was fighting the Supreme Court he ran the risk of losing Congress.

This constitutional situation presented a serious problem in peace time. How much more so it does in national preparations against the menace of war now begins to appear. But there is one curious difference. The President is commander-in-chief of the armed forces and he conducts the foreign relations of the United States; the more defence and diplomacy come to the fore, the greater the presidential authority. Moreover, the very entrance upon a state of war seems to eliminate most of the old restrictions. As compared to the peace-time polity, the war powers of the President appear almost unlimited and to institute a veritable dictatorship. Thus the guarantees, which in time of peace may hinder democracy's will but impose co-operation and discussion, are swept away in time of war, leaving little to guarantee democracy or to impose consultation.

This, then, is the really serious problem before the Americans today. Having a government based on subdivision of power, and knowing that concentration of authority is essential in war, they have failed, so far, to make adequate provision for democratic control of the executive in time of war. In a recent article on American preparations for the last war, a

careful observer has written: "It is quite in harmony with the experience of the World War to avoid seeking legislative action whenever possible. Such avoidance may be labelled undemocratic—but it frequently saves trouble. Woodrow Wilson learned the lesson before [American entrance into] the World War when he tried unsuccessfully to have Congress sanction the program for arming merchant vessels, even though he believed that he already had the necessary power."² Observe the dictatorial tendency herein implied—executive decree as the short cut to action—after Wilson's first failure to secure legislative consent for a policy he could carry out without such consent. Compare it with the Lend-Lease Bill of today, for it appears that President Roosevelt already has the powers he is asking Congress to endorse. This mode of conducting government—the President seeking the approval of Congress—is in the democratic tradition. But supposing he failed, like Wilson, to win support, what then is his position? He may choose between resignation, inaction, or virtual dictatorship—and the last is quite legal.

The fact is, then, that under war conditions both in Canada and in the United States there is little legal requirement for the executive officers to consult the public or legislatures. Such consultation exists only as matter of democratic principle or practice. But we solved this difficulty long ago by connecting the executive and the legislature in a political fashion by the use of the leaders of the majority party as responsible cabinet ministers. The Americans, however, still retain the legal distribution of power without having developed any political or institutionalized device for bringing harmony between President and Congress, and the result is presidential supremacy in war time. Everyone sees that the provision for a congressional declaration of war is out-moded: wars now are entered into without legal formality or declaration. Everyone knows that the provision for Senate approval of treaties is evaded: what engagements could be more important than the defensive alliance with Canada or the lease of naval and air bases from Britain? But these were not submitted to the Senate by the President.

Until Americans face this problem of relating the President to the Congress in an adequate political fashion,³ they will continue fearful of presidential dictatorship. It would be a sad thing if, in the name of democracy and in the defence of democracy, the President should be

²C. B. Swisher, in *American Political Science Review*, vol. XXXVI, 1940, p. 1103.

³See E. S. Corwin, *The President: Office and Powers* (New York, 1940). Cf. the earlier volume by L. Rogers, *The American Senate* (New York, 1926).

forced to abandon any form of political responsibility. At present they show no sign of meeting this. The only scheme proposed is that of the ancient Romans—a legal limitation of dictatorial power in point of duration, not its control in exercise. Thus they envisage a “constitutional dictatorship” for two years under the Lend-Lease Bill or more generally one for four years under the President’s term of office. In this respect, then, it may be concluded that the Americans have not yet indicated their belief that total war and defence can be entered without dictatorship.

Now let us turn to the second and more important part of the subject. Let us assume a victory of the democracies in the present war, but victory won only after such a concentration on total war that we are in the position of totalitarian states. It is not necessary to argue the economics of war or of post-war organization. Let us assume the worst comes true. Conceive the most extreme consequences of a long war—that man-power and woman-power will have been conscripted for military and civil purposes, that money and credit will continue to be controlled, production regulated, housing carefully distributed, and consumption of most commodities under government direction. Obviously there could be no immediate or reasonably early return to individual enterprise. Britain, for instance, could not put on the street the millions of men and women now diverted to war work. Homes will have been destroyed or dispersed, industries distorted, and the absorption of savings by the state might be expected to prevent private enterprise taking up the task of rebuilding a peace economy. No one would then propose to leave re-employment to the hazards and speculations of competitive industry. The planning and supervisory machinery built up during the war could not readily be discarded; it would have to be utilized to win the peace. After a short war, this might be most true for Britain (and Europe generally) and considerably less true for Canada and the United States; but after a long war the differences between these countries might possibly be simply that of degree.

This may be a shocking thought to many people. To say that Britain and Canada can only come out of the war successfully in so far as they become as totalitarian as, or more so than, Germany, Italy, or the Soviet Union, seems heresy. Yet this is what many economists prophesy, and it is necessary for us to assume the very worst. For many years now the economists have been discussing this project with great seriousness. Fifteen years ago, J. M. Keynes wrote his noted essays on *The End of Laissez-faire*, and since then the topic has been a standard one for radical

and reactionary thinkers alike. It is not a new subject. Formerly it was considered under the heading of "collectivism"—until this became entangled in schemes for sovietism, guild-socialism, and economic representation. During the past decade, the discussion has centred on various planning schemes, communist five-year plans, nazi four-year plans, technocratic permanent plans.

Totalitarianism means regimented and co-ordinated economy under state regulation; and this, under the best conditions of regulation, must mean nothing less than planned economy. Our question, whether there is a future for democracy under totalitarianism, thus turns on the issue whether popular control and participation are consistent with planning. Planning, it must be observed, is always based on the concept that there are experts who know what is good for us. The experts, of course, may be divinely appointed, self-selected, or expert in no other trade than that of coercion. But whatever the source of their authority, be it wisdom, special training, or naked force, the endorsement of their decisions in a planned totalitarian state will tend to assume the guise of dictatorship.

It is fortunate that we do not have to discuss the economic theory of planning and the purposes for which it might be used in a totalitarian state. Clearly enough, such a society could be either communist or capitalist, could permit little or no private property, and could vary from state operation to corporative regulation. The important feature of totalitarianism is that all groupings of individuals, whether labour, capitalist, professional, etc., should be welded into a degree of community solidarity which has not been characteristic of individualist systems. Evidently, then, the subordination of the individual and of his usual free associations to control and direction by the state seems to lead to the conclusion that totalitarianism implies dictatorship. Is this so? The issue has gone beyond the point first elucidated by Mr. Keynes when he asserted:⁴ "Perhaps the chief task of Economists at this hour is to distinguish afresh the Agenda of Government from the Non-Agenda" (which, as Professor Robbins has commented, is just what the classical economists were saying); "and the companion task of Politics is to devise forms of Government within a Democracy which shall be capable of accomplishing the Agenda" (and this too, one may remark, is the ancient democratic

⁴*End of Laissez-faire* (London, 1926, 1927), p. 59. It must be borne in mind that Mr. Keynes was not really going forward, he was going backwards. "I propose a return, it may be said, towards mediaeval conceptions of separate autonomies" (pp. 60-1). This was in the heyday of guild socialism.

problem, how to control government whatever its functions are). But we are now far past this. We are assuming that under totalitarianism there is practically no Non-Agenda, for the state enters into every activity. Can the state still be controlled democratically? Let us concentrate on two points—political parties and administration under such a society.

The reason for discussing political parties is that the existence of two or more parties has usually been associated, in modern thinking, with democratic government. Modern democracy has been parliamentary or representative democracy, and ever since Walter Bagehot explained its nature as being essentially party government, it has been understood that an alternation of parties is a condition of self-government. That there is considerable ground for this opinion follows from observing that the clearest indication that democracy has given way to dictatorship is the suppression of opposition parties and the institution of single-party domination. Thus far, at least, government by one party has proved to be dictatorship, while the persistence of two or more parties gives at the lowest an appearance of freedom and choice. The reasons for this are too numerous to mention, for political parties have many other functions than that of representation of the electors. Parties are also the guarantors of freedom of speech, liberty of criticism, and of the rights of minorities. Though not committing ourselves to the doctrine that democracy necessitates several political parties, we do need to ask whether a totalitarian state must inevitably carry with it government by one party.

The first thing to notice is that the post-war totalitarian situation would be quite different from that under which the first dictatorship parties came to power. The communists, fascists, and nazis were revolutionary in several different senses, but they agreed in one respect—their violent seizures of power occurred in times of chaos and anarchy which already existed or which they themselves created. The revolutionary dictatorships were thus designed to establish a new social harmony and order where none prevailed. In other words, one of the functions attributed to the new ruling parties is the creation of a community solidarity displacing the former social heterogeneity and chaos usually designated as free enterprise. But, if collectivism of the totalitarian type is the next stage after individualism, we have the satisfaction of knowing that this war will already have produced the national unity, thereby rendering unnecessary any such single-party dictatorship. If we end up, after waging a total war, with a totalitarian economy, the new social homogeneity will already have been attained and institutionalized without the

unpleasant internal features of one party dominance. Complete acquiescence in a new social system may have been secured, therefore, in the name of patriotism and defence, without the violence of revolution and dictatorship. Such an acceptance of totalitarianism may possibly be slow in growth, but, assuming a long-continued war, it may confidently be expected to embrace all sections of the community.

It is well understood that, in the last analysis, our polity rests on psychological foundations. A stable society is built on the common agreement that certain basic institutions and processes are to continue. For some years past it has been increasingly apparent that this agreement, usually referred to in politics as the "constitutional consensus," has been breaking down. It is becoming usual to quote Balfour's words about the historic party system: "Our whole political machinery," he said, "presupposes a people so fundamentally at one that they can safely afford to bicker." H. J. Laski cites them half a dozen times in his *Parliamentary Government in England*, the thesis of which is that the former "at-one-ness" of the British people had collapsed. At any rate, it was the feeling of social disintegration which had led the Labour party to consider demanding dictatorial power when it came to power again. In that respect, then, pre-war Labour, like the fascists and nazis in other countries, was tending in the direction of a dominance by one party to force on society a new totalitarian scheme of life.

If the present war does reconstitute anew the sense of social solidarity and create a fresh consensus in which private rights, property interests, labour claims, and all other vested interests are rightly subordinated to the welfare of the whole community, the war will not have been without some good consequences. At least the need for a single-party dictatorship to establish this will have been removed. It will not be necessary, in a long-continued war, for party coalitions to result in a merger of the parties; and this is not to be expected once politicians are reconciled to state regulation of those special interests for which they have hitherto considered it their duty to speak. And, looking at the problem from another angle, the concept of "constitutional consensus" provides us with another, though perhaps more cynical, ground for expecting the possible continuance of two or more parties. The frequent criticism directed against democratic parties, past and present, that they are shams, empty bottles bearing different labels, ultimately comes down to a recognition of their basic agreement on social purposes. In the past, those who disliked this particular "consensus" denounced the fraudulent partisanship,

and those who approved it gloried in the liberal constitutionalism of the peaceful alternation in power of rival parties. Quite evidently, if there is a new consensus, whether of totalitarian communism or of capitalism, a similarly pretentious and harmless partisan rivalry could exist. There is no reason for asserting that our political institutions and mechanisms are nineteenth-century products and must necessarily pass away with the dissolution of that century's economic system. Neither democracy nor parliamentary government originated with industrialism—as many with constant and vociferous inaccuracy declare—and they are certainly not intrinsically dependent upon the persistence of one stage of its development. There is, however, one very important proposition that is advanced respecting the future of parties under totalitarianism which must be examined.

As already noted earlier, the totalitarianism usually envisaged for the future is based on planning. It is not merely that collectivist organization is stated to leave no place for free association. This is easily answered.⁵ The more serious assertion is that planning is such an expert business, so technical and complicated, that it will necessitate control by technicians. The fallible, ignorant, and untrained public can have no voice in a sound plan for a new society. Further, government will not even be carried on by politicians, but by those skilled in the science or art of planning. To an industrially-minded folk, the engineers seem picked out for this task. Yet they have been adequately disposed of by Professor Robbins, who argues on purely economic grounds that in "deciding whether to produce this commodity or that, or in what proportions to produce both, the technique of the engineers is helpless."⁶ These, he asserts with truth, are questions of costs, human and monetary, and are primarily economic matters. If his criticism implies, as it may seem to some, that we have to put the economists in charge, then it may be responded that there is no reason for substituting economists for engineers as our dictators. If we discard aristocrats, princes, militarists, and party bosses in our new society, it is surely not to fall into the hands either of economist or technician, no matter how altruistically minded or scientifically trained they may be.

The democratic principle in the old system of liberal individualism was that each individual knew, not what was best for him, but what he

⁵Collectivist doctrines were first proposed as a means of ensuring free association and co-operation.

⁶*Economic Planning and the International Order* (London, 1937), p. 196.

wanted most. If there is to be a democratic principle in totalitarianism it must remain this one—that the new order is to cater to the wants and wishes of the members of the community, and is not to give them what some smaller group of individuals conceive to be good for the rest. In other words, to preserve democracy under any new order, we must keep it perfectly clear that there is no such thing as a true and absolutely right plan known only to our betters. We must make it part of our new "consensus" that even in a planned economy there is no one sound plan, but on the contrary numerous workable plans. And instead of adapting the people to a plan, it is the duty of the planners to adapt their plans to the people.

This brings us to a very serious criticism of totalitarianism as introduced in the dictatorship countries by a one-party system. In each case they have presented us with a most pretentious and artificial display of unity and conformity. The semblance of social cohesion and uniformity has been a unity founded on intimidation and repression. There has not even been a pretended unity through the enforcement of similar laws for all. The law under the dictatorships has been selective and discriminatory in its operation. In Russia, they began with the expropriation of the possessing classes. But this was not all. They gave us that significant word, liquidation, applied to their extermination of the kulaks. In Italy, they commenced with the castor-oil treatment and soon resorted to segregation of political opponents. In Germany, the concentration-camp method was carried to the highest development with appropriate German thoroughness, and was accompanied by a consistent effort to destroy one section of the populace, the Jews. In each case, the failure of all measures to produce the declared objective, social harmony, has been shown clearly by the constant need of penetrating into every phase of human society with a secret police. The sovietizing of the U.S.S.R. has never been fully attained, and control by a small exclusive communist party has had to be continued despite the pretended guarantees of the new constitution of 1936. The much-vaunted co-ordinating syndicate system of the fascist corporative state has never yet functioned and has remained a paper structure; though time after time the corporate chamber has been advertised as about to supersede the representative chamber of deputies, the latter persisted until two years ago. In Germany, the elaborate Labour Front, into which all, workers and employers alike, were regimented, was well understood to be merely an instrument of control by the Nazi party. For, as a recent



writer has remarked, "In spite of its outward appearance of unanimity, the Totalitarian State is not free from internal conflicts. The suppression of opposition and the construction of a new political oligarchy creates not unity, but a new struggle of rival personalities and groups; and economic depression and internal tension tends to recreate opposition and to set the Party once more against the State."⁷ It appears, then, that you may elevate an ideology to the highest pinnacle—whether it be marxist communism, fascist nationalism, or nazi racialism—and yet despite all this, society still remains composed of diverse and divergent groups and interests. National solidarity as an automatic and self-adjusting characteristic of totalitarianism remains a delusion. When unity is imposed artificially, it has to be imposed through the dominance of some group who have constituted themselves as its special guardians and are prepared to use all the weapons at their disposal for the maintenance of this fictitious unity.

Complete national or social homogeneity is a myth, but it is the belief of democrats that political harmony can be secured for a stable society by a more reasonable, and we may call it a more rational, recognition of the social diversity. It is part of the democratic faith, too, that the wisest procedure in securing cohesion is compromise and conciliation of the different elements. Given the will to agree, i.e. given acceptance of the necessity for regulation in the common interest, this is the most civilized type of polity. To accomplish this, however, we still require representation, and free representation is the only adequate kind of representation. Conflicting interests cannot permanently be repressed, but their clash may be mitigated not so much by suppression of dissident groups as by their adequate representation in the very places where decisions are made.

In the past, the political parties have professed to perform this representative function. It is widely believed today that they have failed in this task. Up to the present parties have been torn between two tendencies—that of pretending to be distinguished by differing principles and that of actually catering, on this continent at least, to sectional interest. And in the second place, there is a widespread feeling that the best men have been drawn off into other business or professional careers, leaving politics to second-raters. Both of these are capable of change in the future, and such a change could restore public confidence. If this still seems to indicate too much hope of the continuance of political

⁷R. H. S. Crossman, *Government and the Governed* (London, 1939), p. 292.

parties as representative agencies, when we are promised several other brands of economic, vocational, or syndicalist methods, it is because parties do possess one advantage over all economic assemblies which have been proposed or experimented with. No corporate or guild scheme has yet been able to evaluate adequately on democratic lines this matter of representation. Political parties, with all their defects, have proved the only organizations so far in which all men are willing to accept the equality of individuals counted as such by their votes—truck-drivers equal to bankers, miners equal to professors, etc. And this is essential for democracy.

Now let us turn for a brief moment to our last subject. Under totalitarian conditions—with a general consensus or agreement upon a new nature of society and the function of the state, and with a wider use of planning schemes and therefore with slighter variations of policy permissible from year to year—there is every probability that the influence of party politicians will diminish. As governmental functions increase, we might well expect Parliament to be overburdened with the multiplicity of its duties and the centre of political gravity to be considerably shifted. Parliament may continue as the agency for criticism and general discussion; but as the activities of the state increase, as they settle into more definitely established channels, and as regulatory procedures become more firmly grounded on experience, there is reason to believe the activities of the government will become more and more distinctly administrative. We can expect an enormous growth in the supervisory, inspectional, regulatory, and controlling branches of government.

The most fundamental connection of the citizen with his government will not be that rare appearance at the polling booth, as has been the case hitherto. It will not be general laws which will touch our daily lives so much as administrative rules and regulations, executive decisions, and applications of rules which control our freedom, occupations, promotions, and enterprises. It will be here, in the administrative side, that democracy will be preserved or lost. And the continuance or non-continuance of two or more parties may have little to do with our success in democratizing the bureaucracy. Yet this is the subject about which least has been said publicly, for which least preparation has been made, and about which least has been thought. Even in the United States, where there are innumerable research institutes and university teachers engaged on administrative studies, the subject is still very largely

a paper progress. They have been vitally concerned with the training of a skilled, intelligent, and informed officialdom (which they have sadly needed as government action has increased), but they have not yet approached this problem of relating the bureaucrat to the public, except through the dubious ones of election and patronage.

But, in any case, without underestimating the necessity for serious effort at the improvement of the quality and tone of civil administration in all fields—local, provincial, and federal—this is not the vital question. We know from past experience that there is not a Conservative as distinct from a Liberal way of administering a city police system or national postal service, and we realize this much more in war time so far as the defence services are concerned. And in the future, as in the past, we shall have to pay a costly price for the politicalization of administration to the extent that partisanship has entered into selection and promotion of our servants. But expertness is not the most important question to be considered for the preservation of democracy under totalitarian conditions. If each individual's contact with the administrative departments is to be intensified in every respect of livelihood, dwelling comfort, and freedom, it will be possible that liberty would decay unless we can adapt the mechanism of government to popular participation in administration. • “The will to freedom, like the will to power,” remarks Professor Laski, “is a habit, and it perishes of atrophy.”⁸ Unless the public can be brought into direct relationship with the administrative boards and committees in every department and upon every government function in such a fashion as to provide representation, participation, counsel, and control, the discussion of democratic procedures will be valueless. Democracy requires that due precautions be taken to assure representative consideration of the issues involved at every centre where rule-making takes place, or where semi-judicial decisions are made. This cannot be haphazard; it must be institutionalized. We need recognized avenues by which the public may approach the seats of the mighty. Apparently this can occur only through a blossoming of all kinds of associations, free and voluntary organizations of consumers and workers, of youth and the aged, of civil servants and unemployed, of the professions and the managers. For, to quote H. J. Laski again, “men only have an equal interest in freedom when they have an equal interest in its results.” And, if the representative capacity of political parties and

⁸*Liberty in the Modern State* (Penguin ed., Harmondsworth (Middlesex) Eng., 1937), p. 169.

parliaments is inadequate, one of our duties is to invent and create new democratic organs. The use of advisory bodies is perhaps only in its infancy. Interesting experiments are now being made with other devices such as public opinion polls, non-partisan initiative and referendum, non-parliamentary conferences of official and unofficial composition. The utility of some of these may be quite illusory. But, if human inventiveness is not at an end in political matters, these or similar lines will have to be painstakingly investigated.

This paper began with an apology for discussing at this time a topic which at first sight appears purely academic. As was then remarked, the immediate future of democracy rests with the men of action. We cannot see into the future; yet there are many people who fear the consequences of modern developments. Often their voices are raised to protest that we fight for this or that special institution or principle of the recent past. We can never repossess the old days. But it is a fit and proper thing for us to consider the basic matter, whether we can preserve democratic control over whatever social system may emerge from this titanic struggle. My conclusion is essentially this—that come what may, after the victory we expect, the future of our society is still in our hands if we do our part to preserve the primary conditions of democracy. To the doubters one may quote the words of a minor poet of a century ago:

Say not, the struggle naught availeth,
The labour and the wounds are vain,
The enemy faints not, nor faileth,
And as things have been they remain.

If hopes are dupes, fears may be liars;
It may be, in yon smoke concealed,
Your comrades chase e'en now the fliers,
And but for you possess the field.

Let it not be said that our fears of losing what in the past we connected with democracy now hinder our fighters from possessing the field.

The University of Manitoba.

*THE IMPACT OF THE WAR ON CANADIAN POLITICAL INSTITUTIONS**

R. MacGREGOR DAWSON

IT is an old and well-worn charge, now re-enforced by the emergence of the totalitarian state, that democratic governments are essentially inefficient. They are especially alleged to be slow in decision, cumbersome in movement, uncertain and unduly deliberate in execution, these faults tending to become much more pronounced when the increased stresses of war make effective action imperative. But the validity of so sweeping a criticism may easily be questioned, although it is, up to a point, undoubtedly justified. For once that point is passed and a democracy is fully seized of the seriousness of the emergency, it may develop reserves of power which have been hitherto unsuspected, and display a political resourcefulness which will enable it to mould and adapt its institutions to the novel demands made upon them. Such, at least, was the experience during the last world war, and such seems to be the trend of events during the present war also. From this point of view, a survey of the Canadian effort during the past eighteen months discloses something more than the struggle of the Dominion to win the war. It also furnishes an interesting illustration of both the flexibility of democratic government and the nature of the devices which a democracy may utilize without entirely sacrificing the ideas of responsibility and popular control.

* * *

In the early months of the present war the Dominion of Canada moved, in the language of the English Chancery, "with all deliberate speed." The original idea, generally held and frequently expressed, was that the war could be fought in rather leisurely fashion, that Canada could participate and at the same time limit the extent of her efforts. This seems, at least, to have been the hope of most of the people, derived

*The substance of this paper was delivered as a lecture last March at Columbia University and the College of William and Mary. I wish to acknowledge the great help I have received from Professor A. F. W. Plumptre at various stages in its preparation.

partly from their own inclination, partly from the attitude of their government, and partly also by contagion from the lukewarm Chamberlain administration in Great Britain. Canadian Ministers visited England and British officials came to Canada, and all professed to be quite satisfied with the progress of events, awaiting with some complacency the slow economic starvation of Germany as an inevitable consequence of Allied encirclement. Unhappily Germany had other ideas. The disasters of last spring brought a violent awakening, and were susceptible of but one interpretation: the issue became thenceforth a simple one—win or perish. Canada to her great surprise discovered that instead of playing a minor role in the great tragedy of nations, she had, owing to the unexpected collapse of a principal, stepped into one of the leading parts. She now became the chief ally of Great Britain—a position as disquieting as it was flattering. Moreover, she became valuable, not primarily because of her military, naval, and air forces, although they were far from negligible, but especially because of her ability to furnish the raw materials and manufactured products which modern warfare demands in such abundance.

The recruiting and training of the fighting services have, in fact, presented few problems which can compare in complexity and urgency with those which have appeared as a result of the economic effort of the Dominion. In the last war Canada contributed vast quantities of shells, food supplies, and various natural products; and the task was made relatively easy both by the simplicity of the commodities needed and also by the nature of the Dominion's previous economic development which had been such as to prepare her for production along precisely these lines. The demands of the present war, however, are much more difficult to meet: the emphasis has been shifted from foodstuffs and commodities easily manufactured to the more elaborate products which can be made only by skilled and semi-skilled labour and highly specialized machinery—a task for which the Canadian economy had been only partially prepared. But the effort is being made, and on an enormous scale. Munitions and war materials such as shells and their components, guns, explosives, bombs, ships, and airplanes, are being turned out in increasingly large quantities; the war metals such as nickel, steel, copper, zinc, lead, and aluminum are being exploited to capacity; while many industries, such as those engaged in the production of automobiles, textiles, dyes, lumber, optical instruments, electrical supplies, etc., are being rapidly extended or, in some instances, established for the first time.

A large part of this development has been carried on with the active assistance of the British and Canadian governments. Existing plants and facilities were naturally used whenever it was possible to do so; but these have been quite insufficient to bear the heavy and diversified load which has been imposed. Production had to be enlarged far beyond any normal or abnormal peace-time scale; and a great variety of commodities was needed which had never been produced in Canada before. Private initiative might have met this demand; but in most instances the cost would have been high, the problem of amortization would have been difficult, and, above all, the process would probably have been slow. The government therefore decided early in the war to authorize and pay for the immediate expansion of these vital industries wherever necessary, and, while retaining ownership in any machinery or plant which it financed, to allow the private concerns to retain so far as possible the organization and control of the productive processes.

The policy of the government [said the Minister of Munitions and Supply] in giving financial assistance to expand existing plants, or to build new plants, has been based on the fact that the government is itself the sole purchaser of the production from these plants and, therefore, would itself pay any sums set aside as depreciation in the war period. We have, therefore, in cases where facilities cannot be financed privately, adopted the policy that new construction, or expansion of manufacturing equipment, should be paid for by the government, and ownership retained by the government. In the case of new buildings, we have required that the land be deeded to the government, or leased to the government on satisfactory terms. Where machinery has been placed in an existing building, the machines have been stamped as the property of the government, so that government property can be recovered when its usefulness ceases for the production of munitions. . . . Circumstances do not always permit us to follow the pattern I have described. We have on occasion found it necessary to expand plants along lines which do not permit the segregation of private property and government property. In such cases it has been our practice to place the operation of the plant in the hands of trustees, whose duty it is to protect the respective interests of private and public investment. . . .

In these plants, Canadian industry is producing all the chemicals that are used in the manufacture of explosives, and is producing or will be producing some chemicals which have hitherto not been produced in the British Empire; it is producing or will be producing almost every type of shell in use in the present war; it is producing or will be producing field guns and gun carriages, naval guns, aircraft and tank machine guns, anti-tank guns, tanks, universal carriers, mechanized transport, training and fighting aeroplanes, and practically all other items of essential equipment to meet the needs of modern mechanized warfare.¹

But this has been only one side, and the easier side, of the government's economic leadership. No vigorous national effort could be made

¹*Canada, House of Commons Debates* (unrevised), Nov. 20, 1940, pp. 287-8.

unless the unifying influence and authority of the federal government were constantly exerted in almost every field of activity which was even remotely connected with the war. To impart the necessary speed, unity, and intensity the government has been compelled to embark on an extensive system of controls, as elaborate as they are unprecedented, each of them designed to serve the one supreme purpose, each of them bringing in its train problems and difficulties of a quite novel kind. To compensate for the loss of normal markets occasioned by the war, for example, special arrangements had to be made to dispose of such surplus commodities as wheat, apples, and lobsters; to finance purchases of supplies, the government has been compelled to regulate and conserve foreign exchange; to provide an adequate force of skilled labour, the supply had to be regulated and training schools had to be established for the purpose of giving technical instruction; to secure and preserve ample quantities of raw materials, such as lumber, oil, steel, and other metals, the government has on the one hand adopted measures to stimulate their production, and on the other hand has endeavoured to restrict their consumption to the vital industries. And always behind these and other similar difficulties have stood the twin demons of all war-time production—timing and priorities. These have cast their shadows over all projects, threatening the most praiseworthy efforts with disaster, and in one form or another offering a continual challenge to human foresight and ingenuity. No authority but a government endowed with comprehensive powers could hope to deal promptly or adequately with these never-ending problems, which appear and re-appear in virtually all industries, at any time, and in widely different manifestations.

* * *

The political machinery which the government has used to cope with these difficulties has taken many varied forms—so varied, indeed, that it is possible to mention here only a few characteristic types and features.

In the first place, the increased burden of administration has inevitably led to the appointment of a number of new Ministers accompanied by new departments and administrative units. Two departments have sprung up because the government has been forced to assume extensive responsibilities in fields which were virtually untouched before, namely, National War Services and Munitions and Supply. The other change is a more unusual one. The Department of Defence had become so extended and overworked that subdivision of some kind became impera-

tive, for nothing but a greater measure of devolution could produce the desired attention, aggressiveness, and initiative which were so eminently necessary if the fighting services were to be effective. The work of the Department of Defence was thus split up among three Ministers, the Minister of National Defence, the Minister of National Defence for Naval Affairs, and the Minister of National Defence for Air. Each is head of a definite service, each is in control of his own special activity and is clearly responsible for its efficient administration, yet the Department is still a unit and the closest co-operation is maintained through the person of the Minister of National Defence, who wields final authority in any matter involving more than one service. An Associate Minister of National Defence has also been provided for, who is endowed with all the powers which the Minister himself possesses; this position being held at present by the Minister of Defence for Air.² All these arrangements are designed to secure decentralization, while at the same time preserving the essential unity of the services without bringing in an outside co-ordinator. In this they seem to have been reasonably successful; although the doubling of function by the Air Minister introduces complications which on paper at least appear somewhat formidable.

The creation of new departments and the expansion of old ones is, of course, an old and obvious expedient to meet a condition of greatly increased government activity; but Canada has adopted other expedients which have been more unorthodox. The chief experimenter has been the Ministry of Munitions and Supply, a role for which it was obviously cast by virtue of the abnormal operations of the government within that field. The function of the Department's predecessor, the War Supply Board, had been largely confined to the comparatively simple task of placing government orders; but when the new Department was organized, it was compelled to widen its scope to include not only the ordering of war materials, but also the supervision of their production; and from that point, to control the sources of essential commodities used in this production; and from that again, to co-ordinate all industrial activity. The Department of Munitions and Supply has thus moved on from strength to strength; and no one as yet can pretend to set limits to the scope of its ultimate authority.

* * *

One of the unusual devices used by this Department has been the government corporation. There are eleven of these bodies at present,

²*Statutes of Canada, 4 Geo. VI, c. 21.*

each organized on the model of a private business concern. The government holds all the shares in the company (the directors being the nominal owners of one share apiece), and it appoints the president and board of directors. These are held responsible to the government through the Minister of Munitions and Supply, and their operations are subject to Treasury control and government audit. In effect, each corporation operates as a separate entity under its president and board, and these have been given a free hand by the Cabinet. In no instance are the offices of the corporations situated in Ottawa. They engage in a variety of functions. They may be concerned with the purchase of supplies: one, for example, buys machinery and tools, chiefly from the United States, for government use in munitions factories, while another bought up large quantities of rubber in order to maintain a reserve stock for war purposes. Or they may be engaged in the manufacture of special war equipment, such as optical glass and precision instruments; or they may be concerned chiefly with the organization and oversight of production, such as Federal Aircraft, Ltd., whose operations, or lack of operations, have been so constantly under fire during the past few months.³ The two most recent corporations, announced only a short time ago, are to deal with housing for war factory workers and the expansion and co-ordination of ship-building facilities.

These corporations are distinguished from all other government agencies by their form of organization, their freedom from most of the usual ministerial controls, the secrecy which surrounds the operations of some of them, and the purely business character of their personnel, and these are, in the main, the chief advantages claimed on their behalf.⁴ The arguments are not entirely convincing, although admittedly our knowledge of their operations is extremely limited. It would appear, for example, that the work of at least some of the corporations could have been done as well, and conceivably better, by private concerns or by a branch of a government department. The conspicuous illustration is Federal Aircraft which, by common consent, has been singularly ineffective in its job of co-ordinating airplane construction and of manufacturing airplane parts; and while many of the delays which have arisen there may have been unavoidable, the results have certainly not been encouraging. Changes in orders, changes in management and administration,

³Cf. speech of the Hon. C. D. Howe, Minister of Munitions and Supply (*Canada, House of Commons Debates*, unrevised, Nov. 20, 1940, pp. 294-5).

⁴*Ibid.*

changes in plans and specifications are some of the chief faults alleged;⁵ the corporation seems to have fallen between two stools; it has had neither the initiative and drive of an independent company nor the complete authority and prestige of a government department.

The work of some of the other corporations could in all likelihood be carried on quite efficiently by more direct government action. There would seem, for example, to be no very good reason why a departmental branch could not buy rubber or obtain, regulate, and pay for a supply of machine tools for munitions production. Obviously, profound changes in ordinary peace-time departmental routine would have to be made: the officers would need to be especially picked for their positions; they would be given unusual latitude and discretionary powers; they would have at their disposal almost unlimited financial resources; some of them would probably enjoy the right of direct access to the Minister; but then many, if not all, of these unusual privileges have already been given in recent months to some other members of the department. The cloak of secrecy, another alleged merit of the government corporation, which was supposed to hide the operations of some of these companies has probably been more illusory than real; and the commercial concerns in the field, whose ignorance was most desired, could not have remained unenlightened for any lengthy period. Moreover, sound public policy would suggest the undesirability of linking secrecy with action independent of departmental control, unless the reasons for such a step were overwhelmingly strong and no other course was at all feasible.

The government corporation has one outstanding merit: it appeals to the business man who is asked to operate it. He will feel more at home in such an atmosphere: he can transplant his own methods of work and discipline without any need for painful and upsetting readjustments; he has in far greater measure the feeling that he is master of his own quarter-deck. The creation of this congenial environment is, beyond doubt, extremely important and it might in exceptional instances outweigh the disadvantages, particularly if any real difficulty were encountered in obtaining efficient men to place in charge of these operations. On the other hand, talent of this kind has frequently been fitted into the departmental organization which can, if necessary, be stretched in time of war to allow for the personal idiosyncrasies of extremely valuable assistants.

⁵*Financial Post*, Jan. 25, 1941. Cf. the Hon. C. D. Howe (*Canada, House of Commons Debates*, unrevised, Feb. 26, 28, 1941, pp. 1143-66, 1235-50).

But the most important consideration of all in the establishment of the corporation was the opportunity it has given the Minister to decentralize certain activities of his department and keep them away from an already crowded capital. The situation last year was critical and the pressure on the government enormous; and the Minister seized the opportunity to cut off several segments of his heavy task and place those under specially qualified direction in other cities. But arguments which were convincing a year ago may have lost much of their cogency during the interval, and it is not inconceivable that the government corporation may already have outlived its usefulness. It may prove to have had great value at the time of its creation when rapidity of action was essential, when secrecy in some instances was hoped for, and when new projects had to be launched at a few days' notice. Red tape, involved checks and counter-checks, careful planning with prolonged delays and all the usual deliberate procedures of peace had to be discarded right and left in order to secure immediate action and flexibility, and this particular device was one of the means used to obtain rapid results. The experience of Great Britain during the last war is perhaps instructive. Mr. Lloyd George set up a Ministry of Munitions with even greater speed, and he secured an amazing harvest, but one by-product was a chaotic department which before the end of the war had to be reshaped and brought together under a more usual and formal departmental organization.⁶ Yet it had, nevertheless, served its original purpose well, and any scheme which had tried to build first an elaborate framework and then develop a department on these lines would never have produced the vital munitions in the required time.⁷ Later, when the need was not so urgent, the rough places

⁶D. Lloyd George, *War Memoirs*, vol. II (London, 1933), pp. 548-654; W. S. Churchill, *The World Crisis*, vol. IV (London, 1927), pp. 298-302.

⁷"It must never be forgotten that the Ministry of Munitions was called into being by the convulsion of war; the one overpowering need of the moment was to supply the troops with weapons and with munitions which were required. What else mattered? What else compared for a second with that? An extraordinary improvisation without parallel in any country in the world took place in our industrial system. Thousands of persons who knew nothing at all about public business or public departments, thousands of firms which had never been used for warlike manufacture, were amalgamated together, brought hastily together, and out of this evergrowing and enormous organisation that great flow of material of all kinds which raised our Army to the very forefront of the combatant armies was almost immediately produced.

"If at that time you had enforced strict and circumspect financial control and procedure, with every kind of check and counter-check operative both before and after the event, you might indeed have saved several millions—I dare say that is a modest

were made smooth, the lines of authority became uniform, the more individualistic methods gave way to more orthodox procedures. Canada is now approaching this same period of readjustment. Many improvisations which have given fairly successful short-term results will have to be modified or discarded, and their place taken by institutions fitted more carefully into the general departmental scheme and organized in such a way that a more efficient oversight and control can be maintained by the central governing authority. The recent creation of Wartime Housing, Ltd. and Wartime Merchant Shipping, Ltd. is, however, somewhat disturbing, for it apparently indicates that the government is still determined to continue the corporation as part of its future administrative organization.

* * *

Another unusual experiment at Ottawa is the placing of Controllers over certain primary industries especially affected by the war, namely, steel, timber, oil, metals other than iron and steel, machine tools and machinery, power and electrical equipment, ship construction and repairs, and motor vehicles. Each industry has its own Controller who has been given virtually dictatorial powers which he exercises, usually alone, but in some instances with the approval of the Minister of Munitions and Supply. He may, for example, buy, sell, store, and transport any commodities in that industry; he may fix prices, and issue and cancel licences for doing business; he may enter upon and inspect any premises, or he may take possession of any commodity or any of the means of production, storage, or transport used by the industry.⁸ The Controllers are, in the words of the Minister of Munitions and Supply, "general managers of the respective industries over which they exercise control," and they form "a connecting link between government and industry."⁹ More specifically, they are expected to organize and conserve the Dominion's natural resources and turn them to the most advantageous use for war purposes. All the Controllers together form the Wartime Industries Control Board, and they are individually and collectively responsible to

figure—but you would have cramped and paralysed the whole of the organisation, and by so doing would have run grave risk of causing serious military injury which would manifest itself in the loss literally of scores of thousands of lives" (Winston S. Churchill, *British House of Commons Debates*, April 25, 1918, pp. 1156-7).

⁸E.g., P.C. 2716, June 24, 1940; P.C. 2742, June 24, 1940.

⁹*Canada, House of Commons Debates* (unrevised), July 30, 1940, p. 2266 and Nov. 20, 1940, p. 295.

the Minister of Munitions and Supply.¹⁰ Their collective functions, however, have not as yet been very important; but in some instances, such as timber and steel, the individual Controllers have made very substantial contributions to the war effort.

The Steel Controller, for example, has contrived to keep prices down by agreements with the industry, has reduced the number of standard structural steel shapes by 75 per cent, has made arrangements with the United States for the importation of the necessary supplies, and has drawn up a priorities list to govern the competing demands for steel. The Metals Controller has endeavoured to stimulate the production of necessary metals, while at the same time he has encouraged the use of substitutes, and in one instance, aluminum, has definitely forbidden its use for certain purposes. The Timber Controller, to give still another example, has aided the British and Canadian governments in obtaining their supplies, and although buying in enormous quantities, has succeeded in keeping costs and prices down to their old levels. He has been able to induce the building and other trades to use wood in place of other materials which are not so readily obtainable, and by altering designs and specifications, to effect substantial economies even in the ordinary outlets for wood products.¹¹

The Controllers have been chosen to a large extent from the industries which they now direct—a natural method of selection to which little or no exception has been taken. It would seem to be fairly obvious that the best man to direct the general operations of a vast industry would be one who had already distinguished himself in that field, one who had a lifetime of experience to draw upon and had already built up many connections with other business men possessing similar interests. Such a person would not need to waste any time in acquiring the technical information of the trade; he would know where to look for difficulties and possible obstruction; he would be able to meet the leaders of the industry on terms of equality and answer their arguments and objections with a knowledge and comprehension which would match their own.

All these reasons are sound, but their conclusiveness may well be questioned; for the same background which produces the above merits is apt to bring with it also definite disadvantages and dangers. For one thing, the man chosen from the industry, particularly if he has been unusually successful, is very apt to have made enemies in the process,

¹⁰P.C. 2715, June 24, 1940.

¹¹*Canada, House of Commons Debates* (unrevised), Nov. 20, 1940, pp. 295-7.

and he is likely to encounter some difficulty in securing the complete and unreserved co-operation which the occasion demands. Moreover, it is conceivable that he might be tempted to abuse his position of control in such a way that business rivals would be placed at a disadvantage compared to those firms with which he was on a much more friendly footing. This is particularly dangerous when the powers of the Controllers are virtually unchecked by any political or outside authority. In Canada, for example, the Minister's influence over the Controllers seems to be largely nominal, while the Board as a whole does not attempt to check the powers of its individual members. It is only fair to add, however, that none of the Controllers has been accused of any partiality or discrimination in these matters. But the fundamental idea is nevertheless an unsound one, no matter how fortunate the Dominion may have been in avoiding its more sinister consequences. "The power of death," in the words of a Canadian writer, "over even an unimportant part of industry should not, as a principle, be entrusted to a member of that industry, unless there are sufficient safeguards to protect members of that industry who may not be members of a dominant or even influential group."¹²

Moreover, there is the further possibility, inherent in any such arrangements, that the interests of the trade and the public interest may become hopelessly entangled. Consider, for instance, the following extracts from two speeches made by Canada's first Timber Controller:

The Timber Controller stated that in his opinion Canadian people have departed from a sound Canadian economy. . . . We need in Canada to swing back to a sound use of forest products, the products of our own land and of our own labor and not requiring foreign exchange. Mr. MacMillan [the Timber Controller] believed that the forest industries should unite and set up a defensive system against the unwise use of other materials in construction. . . .

When Timber Control first saw the specifications for the Government buildings it was discovered that all the flooring and the wall linings were to be constructed of commodities other than wood. This resistance is hard to break down. It has to be broken down, it cannot be coaxed down. . . .

The war is resulting in the creation of a number of exotic industries. These will be a source of danger after the war. Manned by engineers, and boosted by local industrial populations, there will be a demand for their continuance after their war-time usefulness has passed. If this is acceded to the use of wood will be smothered. . . .

The mandatory power of the Control was seldom invoked and he did not anticipate that it would be needed to any great extent. However, through its handling of pur-

¹²Politicus, "The Problem of Controlling the Controllers" (*Saturday Night*, Oct. 12, 1940).

chases for the Government's military building programme, it had given the Timber Trade an opportunity of working towards a sound national policy.¹³

It is difficult to read these extracts without wondering where the timber dealer ends and the Timber Controller begins. The speaker has obviously not withdrawn from his old occupation, and his eye is still fixed unfalteringly upon the interests of the lumber industry, both present and future. It is a natural obsession, but none the less embarrassing for that; although, under the circumstances, it has one very definite advantage, namely, it lends drive and power to the Controller's new mission of giving momentum to the lumber trade and of replacing steel by wood at every opportunity. But it may go farther. Is it, for example, at all desirable that a Controller should use his unique position avowedly to remake the Canadian economy, not only now but after the war as well, in the interests of his particular industry? Is there not a danger, too, that the national war effort may be seriously impaired by antagonizing, for example, the steel industry, which might, quite legitimately, take the position that while its members willingly acquiesced in the substitution of wood for steel as a war measure, they viewed with suspicion and alarm any efforts made through the present emergency to bring about a permanent re-adjustment, and to make the Canadian nation—in Mr. MacMillan's singularly suggestive word—"wood-minded." .

Moreover, there is probably no necessity for creating any such predicament, for the position of Controller can be filled acceptably—in all likelihood much more acceptably—by one who has not been brought up in that particular industry. Such a person must necessarily act with a sound background of technical information, but that can be provided by a number of specialist assistants and consultants, leaving to the one in charge the settlement of disputes, planning in its broad sense, and the guarding of the various interests under his jurisdiction. The operations of the Steel Controller, a civil servant with only a limited knowledge of steel, furnishes at least some evidence in favour of this contention, for his work by all accounts has been eminently well done and he apparently enjoys the complete confidence of the iron and steel industry. The experience in Great Britain during the last war, when business men were used in a wide variety of positions, strongly suggests the undesirability of choosing the top men in authority from the experts in that particular field. One exceptionally good illustration was furnished by the food control. Lord Devonport had been a prominent figure in the wholesale

¹³*Timber*, Nov., 1940, pp. 11-13, 64.

grocery trade, and was made Food Controller primarily because of this intimate knowledge; yet his complete failure in that position was in large measure the result of that specialization. He became immersed in trivialities; and he lacked both the breadth of outlook and the adaptability which the new, unaccustomed problems demanded. "His conscientiousness and appetite for work," writes Sir William Beveridge, who served under him, "and his consciousness of unrivalled knowledge about food gave him an excessively personal view of his functions; he reserved initiative, action, and responsibility for himself to an extent making congestion and delay inevitable."¹⁴ Lord Rhondda, who succeeded him, and whose specialty was coal mining, proved a complete success. He used food experts freely, but he diluted these members of his staff with trained civil servants; he was never tempted to interfere in matters of detail, because in such things he had no special knowledge nor was he hampered by any consciousness that he possessed and hence should use that knowledge; he saw things in broad outline, and trusted his subordinates implicitly.

"As to lay and expert administration," comments Sir William Beveridge, "the experience of the Ministry confirmed the view enshrined in the normal practice of the constitution, but occasionally forgotten during the War, that experts are bad masters, and that Ministers above all are best with no previous experience of the work they are to do. The co-ordination of two or more allied branches of work should be given not to an expert in any one of them, but to some one equally ignorant of all."¹⁵

To return to the Canadian scene of today. One might suggest, as a postscript, that the success of Canada's first Timber Controller was probably not so much the consequence of special training in the lumber industry, (although that factor was important in some of his early construction work) but rather the effect of quite other characteristics. His great merits have been his imaginative power and ability to think in a large way, combined with a personality and forcefulness which brush all obstacles aside and get things done speedily.¹⁶ In one of the speeches already quoted Mr. MacMillan stated that there was "lots of authority in Ottawa, but the trouble is there are not enough people willing to

¹⁴Sir W. H. Beveridge, *British Food Control* (New Haven, 1928), p. 47.

¹⁵*Ibid.*, p. 335.

¹⁶Mr. MacMillan's adaptability and unusual quality have been recognized by his appointment in succession to the positions of Timber Controller, Chairman of the Wartime Requirements Board, President of Wartime Merchant Shipping, Limited.

exercise it." The remark not only reveals the dynamic characteristics of the Timber Controller, but it also suggests that the really serious obstacle to efficiency in the Dominion government today is not the lack of specialists, but the lack of more men of force and originality, equipped with a genuine talent for administration.

* * *

The most apparent change which the war has wrought at Ottawa is the wholesale introduction of new personnel and the creation of an enormous number of *ad hoc* offices—a familiar war-time phenomenon. There is an overpowering tendency, which is as yet virtually unchecked, to endeavour to solve all difficulties by inventing a new office or a new board, and the administrative picture is as a result steadily becoming more complicated and more difficult to comprehend. Some time ago the government, apparently inspired by the activities of Herr Goebbels, issued a pamphlet entitled *War Organization: Cabinet Committees and Related Agencies*, which enumerated in an impressive but rather uninspiring fashion many of these offices and the supposed chain of authority which bound them together. This was at best never very enlightening nor did it describe very accurately the realities as distinguished from the outward form of the administration; and it passed rapidly out of date as many more positions were added to the general *mélée*. The public have long since abandoned any attempt to understand all these ramifications, while the government departments themselves are frankly bewildered by the ever-growing administrative army which has suddenly appeared in their midst. To understand its organization and the relations of its personnel is like trying to fit together an enormous jig-saw puzzle, while some wanton genius at one's elbow keeps throwing in handful after handful of new pieces at irregular intervals. The Prime Minister must frequently share the dismay of the Duke of Wellington in the Peninsular War when he inspected a levy of raw recruits which had recently arrived from England. Wellington surveyed them with growing consternation, and then remarked to one of his aides in shocked tones: "I don't know whether they will frighten the French or not; but by God they frighten me!"

The chief point of interest raised by the flood of new men in the service centres about the generous use made of the so-called "captains of industry" and "dollar-a-year" men. It was inevitable that business generally should be heavily drawn upon in the emergency, partly because

the business world provided the most natural supply of talent, and partly also because certain departments, notably Munitions and Supply, were engaged for the most part in industrial work. Men of technical experience and proficiency were thus available for many positions, and were absolutely indispensable for others. But there is a pronounced tendency, apparent to some degree in government circles and very evident elsewhere, to magnify this admitted usefulness of the business man and regard him as being so extremely competent that he is able to cope with any emergency. The business man will, we are told, solve all the problems which arise at Ottawa to the confusion of both politician and civil servant; he will cut ruthlessly through red tape and expose political insincerity and ineptitude; he will bring results in place of deadlock, and action in place of official inertia.

Some persons [writes Sir Gwilym Gibbon] have a sovereign remedy for these and other ills of public administration at a time of war—call in the business man and put the whole concern, whatever it be, under him. This is a pathetic fallacy, as was shown during the last war: it is about as sensible as to imagine that a champion prize-fighter would make an admirable leader of a regiment. Because a man has been successful in business, it does not by any means follow as a matter of course that he is a good administrator: his success may have been due to other qualities, qualities which may be of great service to the government during war, but not in an administrative post. Many men of business, of course, have the particular abilities and experience to fit them for high administrative office, and the country should seek and use the ablest men wherever obtainable. . . . But the men chosen must be of the right kind of calibre.¹⁷

Mr. Lloyd George, who as Minister of Munitions was responsible for introducing large numbers of outsiders into the government service in the last war, was conscious of the same need for distinguishing between the two types of successful business men. Those in one class, he pointed out, owe their success to such qualities as perseverance, excessive industry and mastery of detail, unusual technical competence, an ability to build up and slowly expand a small business into a large one. These can undoubtedly be used in the government service, but they are not fitted for the top positions, where entirely different qualities are desired—those which place their fortunate possessors in Mr. Lloyd George's other class. Here are found the "great improvisers," those who have gifts of intuition, rapid decision, and forcefulness, who could with no further preparation "build up a business of which [they] knew nothing," and whose value in

¹⁷Sir Gwilym Gibbon, "The Organization of Government" (*Public Administration*, Jan., 1940, p. 10).

an emergency is, in Mr. Lloyd George's words, simply "beyond price."¹⁸

Business men, and successful business men at that, must therefore be selected and placed in the service with extreme care, and even then the situation may not be an entirely happy one. For these very qualities which have brought them to the top and which make them valuable additions to the public service are apt at the same time to cause friction and misunderstanding. Their past experience, their habits of mind, their familiarity with only the industrial and commercial world, will frequently make them most restive and difficult public servants. They have been raised in a competitive atmosphere; they habitually make decisions with a single eye to their special industry; they are accustomed to go their own way, ride roughshod over opposition, and let any rivals look out for themselves. Thus in the government employ they will tend to exaggerate their own activity; they will have little sense of the public service and the obligation which they owe to other departments. The business man fails to realize that public administration is something more than merely private administration writ large. He regards, for example, all formalism as an evil; he does not appreciate, as someone has said, that red tape is after all not the invention of an idiot, and that more elaborate methods are frequently the most far-sighted and in the long run may be the most efficient. The dollar-a-year basis and the general impermanence of these emergency appointments may add more fuel to the flames of discontent. An employee who feels that he is conferring a favour on his employers by working for them and who, if he does not get his own way, can threaten to go back to another more congenial position, has not the best qualifications for making either a good subordinate or a good colleague, although a strong sense of duty and a breadth of vision may be able to save the situation. The business man who enters the service has yet another handicap to surmount: he must develop what his civil servant associate would call a sense of responsibility. The "captain of industry" sometimes feels that he has been called in to rescue the country from disaster, and that he is therefore free to go ahead with his own pet solutions for the nation's ills and have them always endorsed and supported by the political authorities. But he will find that the Ministers also have their ideas on many of these subjects, and that they are considering many influences and consequences which he believes to be quite unimportant. He will doubtless demand with some bitterness and no little vehemence that his proposals must be accepted, and occasionally

¹⁸D. Lloyd George, *War Memoirs*, vol. I (London, 1933), p. 247.

he may even go so far as to air his grievances against the government policy in public speeches and newspaper interviews. Yet his stake in the venture is quite negligible compared to that of the Minister. If, as is quite possible, his cherished project should fail, he will, at the worst, simply go back with some relief to his neglected business; while the responsible Minister, whose caution he has decried, is left in Ottawa to face the consequences of his subordinate's action, entailing, as it may, political defeat and a ruined career.

There is no suggestion here that all or even most of the business men in responsible positions in the service bring disaster and tribulation in their train, and that they constitute a menace to the efficiency and harmony of the administration. As a matter of fact, they undoubtedly do much good, and their new point of view, their impatience, their desire for action, their resourcefulness, will frequently infuse new life into the more staid permanent civil servants. But there also can be no doubt that the apparently simple device of bringing in business talent to government departments is by no means simple; that some at least of the above factors have caused many worries in Ottawa in the past eight or nine months, and that time, forbearance, and a wider understanding are necessary in order to create a genuinely co-operative body from such varied and frequently antagonistic elements.

The men I had gathered round me [writes Mr. Lloyd George of his Munitions staff] were a diverse crowd—each an experienced leader accustomed to run his own business and give orders rather than to receive them. It was essential for the success of the Ministry that they should learn to curb their independence, and to co-operate with each other. They began the process at weekly meetings, even if at first, it was occasionally in the role of mutual accusers. By degrees they grew to be really friendly, and with one or two possible exceptions they ended by becoming a close-knit band of fellow-workers, with a healthy *esprit de corps*.¹⁹

* * *

An even more fundamental problem in war administration is that of the organization of the Cabinet, the directing head of all government activity. The Canadian Cabinet has in peace time been reasonably successful in its primary task of giving leadership to the nation, but minor flaws which could be overlooked or tolerated under normal conditions may easily become much more serious when subjected to the increased strains of war. Happily the Cabinet by virtue of its informality and inherent flexibility contains in itself a potential capacity for reform, and

¹⁹*Ibid.*, vol. I, p. 283.

the necessities of the war have resulted in several changes being made which are designed to increase its general efficiency.

The most obvious criticism of the Cabinet as a war executive is its excessive size. "You cannot run a war with a Sanhedrim," said Mr. Lloyd George in his usual vivid style; and the normal Canadian Cabinet, augmented by additional war Ministers, was too cumbersome a body to do its work well. Over a year ago, therefore, the Prime Minister set up a War Committee of Ministers who were to consider especially war policy and defence and to make recommendations on these matters to the full Cabinet. At the same time ten other sub-committees of the Cabinet were set up under the War Committee, each charged with a special subject such as finance, wheat, internal security, legislation, shipping, etc., each consisting of four to six Ministers whose work was closely allied with the general activity of that particular body.²⁰ These ten committees, however, have proved for the most part to be more effective on paper than in reality, for while some are very active, many have done little to justify their creation, and certain key Ministers whose names appear on a number of these committees simply have not the time to attend to them. It is, indeed, somewhat difficult to take these committees very seriously, for the evident desire to make an impressive show raises an inevitable query as to the usefulness of even those which on the surface appear most valuable—a situation not unlike that created by Mr. A. P. Herbert's crazy clock which struck thirteen. Not only was the thirteenth stroke itself discredited, but it cast a shade of doubt over all previous assertions.²¹

The above-mentioned War Committee of the Cabinet is, however, in a quite different category and is of outstanding importance. It is composed of senior Ministers, those with war portfolios, and one or two others, making ten members in all. It is the principal co-ordinator for all Canadian war activity; it is the chief policy-forming body and the initiator of war measures; and inasmuch as it is composed of the leading members of the Cabinet, the latter body is not at all likely to set itself in opposition to its Committee.²² The War Committee, it is true, cannot act formally—that must be done by the Cabinet through the Privy Council—but it can always rely on its decisions and recommendations being carried into

²⁰ *War Organization: Cabinet Committees and Related Agencies* (Ottawa, King's Printer, 1940).

²¹ A. P. Herbert, *Uncommon Law* (London, 1936), p. 28.

²² *Canada, House of Commons Debates* (unrevised), July 8, 1940, pp. 1485-90; March 10, 1941, pp. 1535-6.

effect either by the Council or by departmental action. It is admittedly still too large a body to perform its tasks of planning and co-ordinating to the best advantage; but the Dominion's federal character and the strength of sectional and racial influences make these concessions as to size almost inevitable. It will be also observed that the members of the War Committee are not, like most of those in the Lloyd George War Cabinet of 1916-19, divorced from the work of administration in order that their time may be devoted exclusively to pondering over the problems of the war and making plans for the future. This idea of the contemplative Minister, untrammelled by routine, has never gained much support at Ottawa and, indeed, the present Cabinet in London, although adopting this principle at the outset, has now virtually abandoned it and has returned to a Cabinet of heads of departments. There is a growing conviction in both capitals that effective planning, especially in matters as complex as those raised by the war, can be usefully undertaken only by those whose ideas are firmly rooted in the work of practical administration. "The men who make the decisions," wrote Professor Laski, "must be those through whose hands the pivotal papers pass. They do the work of selection out of which principles emerge; and the work of selection is the necessary groundwork upon which alone right decisions can be taken."²³

The war has forced the Canadian Cabinet to make further changes in organization which cannot help but be productive of beneficial results. Over a year ago the Clerk of the Privy Council was also made Secretary to the Cabinet, an entirely new position, designed to systematize and accelerate Cabinet business. To date, however, the Cabinet has gone on much as before, that is to say, with no formal organization whatever; but substantial changes have been introduced in the War Committee. The Secretary of the Cabinet, for example, frequently draws up the agenda for the Committee's meetings, and various important documents may be prepared by him and circulated beforehand to the Ministers who will attend. Minutes of the meetings of the War Committee are kept by the Secretary and the decisions made are not only recorded but sent to the Ministers concerned. The Secretary also acts as a liaison officer between the War Committee and a group of distinguished civil servants known as the Advisory Committee on Economic Policy to which the Ministers frequently refer troublesome problems for investigation and suggestion.

²³H. J. Laski, "The Structure of the War Cabinet" (*New Statesman and Nation*, Nov. 11, 1939). Speech of Mr. Winston Churchill (*The Times*, London, Jan. 23, 1941).

One obvious and necessary reform in the Ministry has, however, not yet been made—the appointment of Members of Parliament to act as under-secretaries or political assistants to the Ministers. The Under-Secretary would take much of the drudgery off the Minister's shoulders; he would substitute for his chief in Parliament, both in the answering of questions and in debate; he would release the Minister so that he could devote more time to the vital questions of his department and particularly to the difficult problems of planning and of co-ordination. These under-secretaries have been a valuable part of the government of Great Britain for generations; they have been frequently advocated in Canada in time of peace; they were used in a modest way, but with excellent results, by Sir Robert Borden during the last war; they have been repeatedly endorsed by the present Prime Minister.²⁴ The chief reason against their use seems to be the jealous reluctance of Ministers to relinquish even a small part of their extensive powers; but there are definite signs that this opposition may soon break down before the heavy pressure of departmental and parliamentary work. The change would be a simple one and could not fail to bring material relief to overworked Ministers and be accompanied by beneficial results to the entire administration.

* * *

Such are some of the changes in Canadian government brought about by the present war, and they have been chosen primarily because they appear to be the most unusual or to present the most interesting problems. The majority naturally centre about the executive and administration, for it is there that the full brunt of the war is felt, the greatest concentration of power takes place, and the most radical alterations must necessarily be introduced. In this war, as in the last, cabinet government has experienced little difficulty in adapting itself to the most urgent demands made by the emergency, although some of these changes have not yet become thoroughly adjusted to the national political structure. It still remains to be seen whether cabinet government will again be able to reverse the process with the return of peace. At present it seems likely that many of these new features will disappear with the war, for they embody a far greater measure of governmental control than the Canadian people would willingly accept in normal times; yet here no one can speak with assurance, for the length of the struggle may prove to be

²⁴Cf. R. MacG. Dawson, "Canadian and Imperial War Cabinets" (*Canada in Peace and War*, Toronto, 1941, p. 202).

a determining factor. Other precedents and expedients however, will doubtless be continued, for some of them have been within sight for years, and it needed only the additional impetus of the crisis to bring them to the fore and make them effective. The war may yield at least that meagre advantage; and it will be well, perhaps, to close on this rather gruesome note of optimism, for a world convulsion is, to state it mildly, a rather drastic and elaborate method to obtain even the most praiseworthy reforms. Such a situation, indeed, brings to mind a debate which occurred in the British House of Commons during the last war, when Mr. Winston Churchill, returning to the House after some time in the army, repudiated some of his earlier acts, and tried to excuse himself on the ground that while at the front his mind, as he put it, had cleared. The opportunity was too tempting for Mr. Balfour to resist, and he made the following reply:

My right hon. Friend said that he had gone since then to the front, and that with the opportunity for calm meditation which apparently the front presents his mind was cleared. The great ancestor of my right hon. Friend, the first Duke of Marlborough, was always supposed to be more cool, more collected, more master of himself, more clear in thought amid the din of battle than he was in the calmer occupations of peace, and perhaps my right hon. Friend shares this hereditary peculiarity. I venture to suggest that that clearness of thought which we all desiderate is bought at a rather costly figure if it involves a European war in order to obtain it.²⁵

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²⁵*British House of Commons Debates*, March 8, 1916, pp. 1555-6.

TAKING STOCK OF FEDERALISM IN THE UNITED STATES

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FEDERALISM is not the least of interests shared by Canada and the United States. The elements of likeness and unlikeness exist in a balance that makes comparison profitable, although such comparison is allowed to remain implicit in the following survey of trends in the United States. To discuss in Canada the federalism of another country, of course, is to carry to Newcastle the ashes of its own coals, so greatly are all federal systems in debt to the monumental inquiry of the Royal Commission on Dominion-Provincial Relations. No similar focus yet enlightens the analysis of federal problems in the United States.

I

The temper of the United States is incorrigibly one of contrivance. The brevity of the constitution leaves it essentially unwritten. Of the obstacles of the formal amending process, of course, it can no longer quite be said, as Frank J. Goodnow put the matter in 1911, that "the constitution of the United States is, on account of the complicated procedure and the large majorities required, very difficult, if not impossible, of amendment under ordinary conditions."¹ After forty-three years without an amendment, six have been ratified since 1913. But the habit of relying on adjustment by interpretation is deep. The Supreme Court controversy in 1937 would have found the country at a loss to suggest just how it would amend the Constitution if the discussion as a practical matter had taken that turn. Students of government are sometimes irked by the atmosphere that takes for granted the necessity of advance by accommodation; mostly, however, their lives are spent on detailed inquiries that merely deepen the assumption. In recent years the impact of events abroad has challenged them to identify and to reaffirm the fundamentals of popular government. But the effect of these events has been to throw the United States back upon its constitu-

¹*Social Reform and the Constitution* (New York, 1911), p. 4.

tional tradition. The mood will last, it is admitted, only so long as there is movement and vigour. Never has the constitutional system of the United States been more fluent. Paradoxically, this condition encourages the survival of the old reliance on piecemeal adaptation.

This attitude makes it easy to avoid the attempt to classify the governmental form of the United States. It was in 1915 that A. V. Dicey said, "The United States, at any rate as they now exist, have been well described as a nation concealed under the form of a federation."² But hardly a decade and a half less than a century before, Tocqueville, speaking of federalism in the United States, remarked: ". . . the human understanding more easily invents new things than new words."³ The concealment to which Dicey referred is in itself a momentous institutional form. It embodies a geographical pattern with which all governmental action must make terms. The fixed system of state areas, to be sure, is not the only method of territorial decentralization from Washington, nor is devolution wholly to areal groupages. But the assurance of the existence of state governments affirms the need for the deconcentration of governmental tasks in a country that is continental in span. However unsuited in detail, the system derives its present vitality from this fact, which is not less important when the states serve as means for the adaptation and application of national policies.

Concern with federalism in the United States—campaign shibboleths aside—is concrete and piecemeal, not abstract and comprehensive. Officially, at least, there is no thought of an inquest pointed to a deliberate and grand reallocation of regulative, taxing, and appropriating powers in relation to the whole country's resources and needs. But there is growing concern in the maintenance of the national market-place. There is mounting interest in the effect of governmental action at all levels on the interstate migration of capital. The vogue of the word planning has far-reaching implications. The pressing question of over-lapping taxation involves, if it does not immediately raise, the underlying financial issue of federalism. Meanwhile the administrative and fiscal methods of federal aid to states and localities are being actively reconsidered in the light of the social objectives of subsidy.

Intertwined in these issues are the strands of three universal problems of federalism that may be drawn out for preliminary statement.

²*Introduction to the Study of the Law of the Constitution* (London, 1915), "Introduction to the Eighth Edition," p. lxxvi.

³*Democracy in the United States* (ed. 7, Boston, 1882), vol. I, p. 200.

First, the problem of uniformity presents a handicap in federalism which, always embarrassing, becomes harassing under the conditions of modern society. How is it possible to secure a sufficiently concerted and uniform approach in dealing with economic matters? Commerce renders the mere convenience of uniformity an almost imperious necessity. Quantity production, still localized to a large degree and apparently likely to remain so, although in new centres, is driven by motives of self-protection to ask for equality in the conditions of competition. Humanitarian scruples, cultivated by numerous associations on a country-wide scale and probably in history never so lively as now, are impatient with uneven standards and performance. The problem of uniformity is not less urgent because the underlying necessity is usually discovered to be, not sweeping uniformity, but rather the calculated standardization of certain crucial and limited phases of each economic and governmental process.

The special obstacles to uniformity in the United States are formidable. The central government is one of delegated powers, which offer a few long but narrow shelves on which to rest coercive action. Such a shelf as the power over interstate and foreign commerce is far-reaching; it crosses nearly every domain of life; but intrastate commerce lies beside it. Thus far the central government has been able to touch many things but to exhaust few; the states can ordinarily deal with the same matters up to the point of positive inconsistency. The sheer number of state units increases the opportunity for variation. The same fact lengthens state boundary lines. These often have little reference to the economic pattern, present or to come. The frequent use of river courses as boundaries has placed many large cities, which rise on natural trade routes, at the circumference of states. This helps to turn much local traffic into interstate commerce. In the course of development, moreover, some former sources of legal uniformity in the United States have weakened. The strands of the common law became less important in an era of statutory law. Besides, as newly formed states grew older, their judiciaries were less disposed to follow the revered benches in a few of the eastern states. At one time the jurisdiction of the federal courts in cases between citizens in different states was thought to afford an approach to uniformity in certain domains of the law; after the 1842 decision of the Supreme Court in *Swift v. Tyson*,⁴ there was a conscious attempt to develop a judge-made federal commercial law. But this

⁴16 Peters (U.S.) 1.

proved to be a complication, not a cure; it merely added another competing jurisdiction. In 1939⁵ the Supreme Court repudiated the doctrine of *Swift v. Tyson*. All of these circumstances have augmented the underlying problem of uniformity, to be solved, largely as a matter of legislative and administrative effort, by national action, or by concerted state action, or by joint national and state action.

Hackneyed as is the problem of uniformity in the United States, little is understood of some of its most crucial angles. We do not know just what variations, within each field of governmental concern, are really needed by reason of physiographic or other underlying causes. We do not know just what are the points within each field of governmental concern at which standardization is imperative and, if made, might render variation in the remainder helpful or at least innocuous. We know little about the relative importance of governmental action, as distinguished from economic factors such as proximity to raw materials or sales markets, in causing business to remain where it is or to move. All of these issues of fact call for realistic, precise, and exhaustive inquiry. Below these questions are others not less needful of analysis because matters of opinion and evaluation, including the nature of cultural diversity and its role in spiritual health, the effect of physical standardization upon such diversity, and the influence of governmental forms and governmental action or inaction upon the standardizing tendencies of a technological age.

A second difficulty met under federalism is the problem of effective stimulation. How is it possible to combine, on the one hand, centralized research, statistics, information, plans drawn from the accumulation of scattered experience, the provision of facilities not easily duplicated and of mobile assistance in emergencies, supervision and the disclosure of laxity—all aspects that have vitality only at the centre—with such values, on the other hand, as popular responsibility and the creativeness of local experimentation? The problem goes to the heart of administration. It is the serious side of the duplication of facilities from state to state and between nation and states, though such duplication in itself is disturbing in the face of mounting governmental costs and a public personnel that in the United States numbers more than three million. The problem of stimulation is a large part of the question of uniformity. Though it besets all forms of organization that are not completely centralized in fact as well as form, federalism complicates the problem

⁵*Erie Railroad v. Tompkins*, 304 U.S. 64.

by insulating the distributed powers under a relatively fixed constitutional plan. The federal system of the United States, in particular, has aggravated the difficulties of stimulation by the traditional practice of administrative dualism, under which the central government has in general acted through its own officers without let, hindrance, or assistance from the states.

A third pervasive problem of federalism is equalization. This arises from the discrepancies between the geographical distribution of taxable wealth and the distribution of the needs for governmental service. In the United States, the problem has grown with the passing of the relative homogeneity that marked agricultural society. Taxable wealth is spotty, while human needs, though they usually follow population, are increased disproportionately by conditions of relative sparsity, congestion, or poverty. The problem of equalization, to be sure, is not peculiar to federalism. It arises as readily under a unitary form of organization whenever responsibility for the support of costly services is devolved upon local taxing units of government. Thus equalization has long been recognized as the most important fiscal problem within the areas of the states in the United States. But a federal system complicates the matter. The Constitution of the United States by silence and long practice left an unusually large proportion of the inherently expensive services of government to the states or to the units subordinate to them. This it did in a country of vast area, strongly marked by natural variations and subject to a long and unavoidably uneven process of settlement and economic development, during which especially there could be no correspondence between population and wealth, between wealth generally and wealth with high current earning power, between wealth physically considered and its ultimate individual ownership, or between any of these things and governmental needs and costs.

Having isolated for purposes of introduction the three interwoven problems that enmesh federalism—identified by the catchwords uniformity, stimulation, and equalization—it is appropriate to review the means of amelioration in such a federal system as that of the United States. Two broad approaches may be abstracted from the tendencies at work. These may be posed as major alternatives, although they are inconsistent only in part, the differences being more of emphasis than of outright choice. Both may be stated before each is examined in turn.

One approach proposes to vitalize federalism by releasing the frozen energies of the states. Related to this is the hope that diversity can

be offset by interstate co-operation, which will serve as a substitute for the unifying influence of national power. Those who sincerely espouse the main approach, however, are apt to put limited reliance on government or, if they regard it as a potent engine, they believe in a philosophy of economic dispersion and small-scale organization. For one reason or the other, the advocates of the approach in question do not fear the inconvenience that the assertion of local power might bring in an integrated economy.

The other approach relies heavily on national leadership. It raises in turn the secondary but momentous question whether a major reallocation of power within the federal system is necessary; and, if so, whether it seems possible through constitutional interpretation or must be sought by amendment. A subordinate issue is the extent to which national leadership can be made effective through co-operation with the states or requires more direct and exclusive forms of action. Related to this is the broad question of methods in the use of a national tax pool and the immediate problems of intergovernmental relations in taxation and of adjustments of federal aid to states and localities in terms of the need for equalization.

II

First to be considered is the belief that the vitality of federalism could be achieved by liberating the states. Advocates of this viewpoint may truly declare that the states have never had a chance, at least not since economic and social problems assumed their present form. Federalism in the United States is untried. States' rights, so called, have not been the rights of states to act but of individuals to be let alone. Give the state governments scope, it is said; allow them to grapple with contemporary issues.

What are the restrictions, in this view, from which the states should be freed? Especially have they been two-fold. In the first place, during the decades when modern industrial conditions have challenged governments, the states have been bound by the due process clause of the Fourteenth Amendment. In the second place, the grant to Congress of power "to regulate commerce with foreign nations and among the several States" has been construed as a restriction on the states. Some relaxation has come recently in both respects, well deserving of comment before the discussion passes to an evaluation of the underlying viewpoint.

The Fourteenth Amendment, adopted in 1868 ostensibly in behalf of

an emancipated racial minority, declared that no state shall "make or enforce any law which shall abridge the privileges or immunities of citizens of the United States"; nor shall any state "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." The first of these clauses has been nearly inert and, despite a recent flurry, seems likely to remain so.⁶ The second, guaranteeing due process of law, has been of overwhelming importance. It was copied from the Fifth Amendment, part of the so-called "bill of rights" attached to the Constitution as a phase of the virtual bargain that attended its ratification, the restrictions running only against the central government. But although due process as therein written merely embodied the concept of "the law of the land" and was thus a procedural guarantee, due process was carried far beyond this in the course of a fluctuating judicial history after its incorporation in the Fourteenth Amendment. The early interpretations restricted the Fourteenth Amendment in two directions. In the *Slaughter-House Cases*⁷ in 1873, presenting the question of its applicability to invidious regulation of private enterprise, the Supreme Court held that the amendment was intended to protect freedmen's rights. A decade later the Court greatly reduced the utility of the safeguards to the Negro by holding that the amendment restrained state and local governmental action, not private action, and that Congress could not legislate to prevent discrimination between individuals.⁸ The first-mentioned narrowing of the amendment was soon shaken off. The liberty of the due process clause was construed to include liberty of contract. *Laissez-faire* was assimilated to the constitutional language, which was made to mean that legislative bodies could not invade the bargaining arrangements of a price economy, even by a process of law which was procedurally correct, unless there were very unusual and

⁶In 1935, in *Colgate v. Harvey*, 296 U.S. 404, the Supreme Court, in striking down a tax of Vermont intended to encourage the loaning of money within the state, invoked the clause about "privileges and immunities of citizens of the United States," which the majority of the Court believed to include the right "to engage in business, to transact any lawful business, or to make a lawful loan of money in any state other than that in which the citizen resides." Apart from its immediate effect in curbing state autocracy, resuscitation of the clause was alarming because of the vagueness of its concepts. In 1940, in *Madden v. Kentucky*, 309 U.S. 83, 93, the Supreme Court found the 1935 decision "repugnant" to its later reasoning and declared: "As a consequence, *Colgate v. Harvey* must be and is overruled." ⁷16 Wallace 36.

⁸*Civil Rights Cases*, 109 U.S. 3 (1883).

compelling reasons, satisfying to courts, based on factors of safety, health, and the like. Thus was inaugurated one of the most extraordinary episodes in constitutional history. Due process became a prime substantive restraint. The state legislatures, ostensibly possessed of residual powers, passed under this bondage.

A reversal of trends that is likely to be decisive began in 1937; it is momentous for the constitutional law of the United States. How swift was the turning of the tide can be seen by comparing two decisions of the Supreme Court in successive years. In the spring of 1936 the Court held invalid New York State's minimum wage law in *Morehead v. New York ex rel. Tipaldo*.⁹ The ground, of course, was alleged interference with the right of free bargaining by the employee, which included the right to take as little as he pleased if that was the price of working at all. In so holding the Court echoed its own doctrine in *Adkins v. Children's Hospital*¹⁰ in 1923, wherein the due process clause of the Fifth Amendment had been interpreted to prevent minimum wage legislation by Congress for the District of Columbia. Soon after the decision on the New York law came the presidential campaign of 1936. The opponents of the New Deal were embarrassed not a little. They could hardly attack social reform bodily but when they said, "let the states do it," the fresh memory of the *Tipaldo Case* mocked their words. The statesmen-jurists of the Supreme Court could hardly fail to see that, unless the way was open for state action on economic matters, slogans of state and local responsibility would be boomerangs. In the following year, when the minimum wage law of the state of Washington came before the Court in *West Coast Hotel Company v. Parrish*,¹¹ the Court not only upheld it but also (avoiding the easy course of differentiation) repudiated the doctrine that used the due process clause to forbid minimum wage legislation generally. "The case of *Adkins v. Children's Hospital*," said the majority of the Court flatly, "should be, and is, overruled." It was the first of a significant number of express reversals. Even before replacements brought the number of Roosevelt appointees to six in a court of nine, the due process clauses of both the Fifth and Fourteenth Amendments and with them the Fourteenth Amendment generally were on their way to elimination as substantive restraints on legislative control of economic matters.

Here it is necessary to note an important counter-current. While the Fourteenth Amendment is being contracted as a substantive restraint

⁹298 U.S. 587.

¹⁰261 U.S. 525.

¹¹300 U.S. 379.

in the economic field, it is being enlarged as a guarantee of personal rights. In the latter application it is technically a substantive restriction, but in a more fundamental sense the whole structure and method of popular, responsible government—including the right of individual belief, access to information, and use of the means of group agitation—may be considered a mighty procedure.

The First Amendment to the Constitution of the United States, it will be recalled, does not apply to the states its guarantees of freedom of speech, press, assembly, and religious worship. Early under the Fourteenth Amendment the Supreme Court held that this did not nationalize civil liberty by absorbing the meaning of the first eight amendments, or "bill of rights." Within the last seventeen years, however, and especially during the last decade, a far-reaching shift has occurred. A few dissents anticipated the change, as when Justice Brandeis said: "I cannot believe that the liberty guaranteed by the Fourteenth Amendment includes only liberty to acquire and to enjoy property."¹² The turn began in 1923 and was indicated in the cases holding invalid state Acts that sought to restrict teaching in schools in languages other than English.¹³ In 1925 freedom of religion was indirectly protected under the Fourteenth Amendment when the Supreme Court annulled an Oregon law that sought to provide that education between the ages of eight and sixteen must be in public schools.¹⁴ In the same year, the Court said in dictum in *Gitlow v. New York*: "We may and do assume that freedom of speech and of the press—which are protected by the First Amendment from abridgement by Congress—are among the fundamental personal rights and 'liberties' protected by the due process clause of the Fourteenth Amendment from impairment by the States."¹⁵ Protection of the press was specifically applied in *Near v. Minnesota*¹⁶ in 1931 and *Grosjean v. American Press Company* in 1936.¹⁷ Freedom for the printing press as an instrument of appeal was extended to the distribution of pamphlets and leaflets, beginning with *Lovell v. City of Griffin* in 1938¹⁸ and continued in the group of "handbill cases" in the next year.¹⁹ In 1940 the Supreme Court inval-

¹²*Gilbert v. Minnesota*, 254 U.S. 325, 343 (1920).

¹³*Meyer v. Nebraska*, 262 U.S. 390 (1923); *Bartels v. Iowa*, *Pohl v. Ohio*, 262 U.S. 404 (1923).

¹⁴*Pierce v. Society of Sisters*, 268 U.S. 510.

¹⁵268 U.S. 652, 666.

¹⁶283 U.S. 697.

¹⁷297 U.S. 233.

¹⁸303 U.S. 444.

¹⁹*Schneider v. Irvington*, *Young v. California*, *Snyder v. Milwaukee*, *Nichols v. Massachusetts*, 308 U.S. 147.

dated a statute that required a prior certificate from a state welfare officer as a prerequisite of soliciting funds for any alleged religious, charitable, or philanthropic cause from other than non-members, in connection with which the officer determined "whether such cause is a religious one or is a *bona fide* object of charity or philanthropy and conforms to reasonable standards of efficiency and integrity."²⁰ Speaking in this case of liberties under which "many types of life, character, opinion and belief can develop unmolested and unobstructed," the Court remarked: "Nowhere is this shield more necessary than in our own country for a people composed of many races and of many creeds."

Of outstanding interest were two cases, also in 1940, that sustained freedom for agitation near the firing line of industrial conflict. In *Thornhill v. Alabama* an anti-picketing statute was held unconstitutional with the comment that "in the circumstances of our times the dissemination of information concerning the facts of a labor dispute must be regarded as within that area of free discussion that is guaranteed by the Constitution."²¹ In the other case, invalidating a local ordinance in California that purported to forbid loitering with a show of placards or the like, the Court said that "publicizing the facts of a labor dispute in a peaceful way through appropriate means, whether by pamphlets, by word of mouth or by banner, must now be regarded as within that liberty of communication which is secured to every person by the Fourteenth Amendment against abridgement by a State."²² The Supreme Court stood ready to apply the doctrine to state court injunctions under the common law, as was shown early in 1941 in *American Federation of Labor v. Swing*.²³ But on the same day, in a significantly divided Court, it was held that this did not protect "utterance in a context of violence," as Justice Frankfurter put it for the majority.²⁴ Freedom of speech and of the press, he said, "will not be advanced or even maintained by denying to the states with all their resources, including the instrumentalities of their courts, the power to deal with coercion due to extensive violence."

Despite the hint of qualification, these generous rulings have fortified

²⁰*Cantwell v. Connecticut*, 310 U.S. 296.

²¹310 U.S. 88, 102.

²²*Carlson v. California*, 310 U.S. 106, 113.

²³61 S. Ct. 568 (Feb. 10, 1941), here applied to picketing by workers not immediately involved in the employer-employee dispute in question; with the Court remarking, "The interdependence of economic interest of all engaged in the same industry has become a commonplace."

²⁴*Milk Wagon Drivers' Union, etc. v. Meadowmoor Dairies*, 61 S. Ct. 552.

the precedents by which protection was afforded advocates of extreme viewpoints in the 1937 decisions of *De Jonge v. Oregon*²⁵ and *Herndon v. Lowry*.²⁶ All of the foregoing cases based liberties on the due process clause.²⁷ Alone in *Hague v. Committee for Industrial Organization*,²⁸ wherein the C.I.O. was pitted against the red-baiting boss of Jersey City, did the Supreme Court (dividing on this precise question) choose to ground its invalidation of the mayor's obstruction of assembly, not on the due process clause, but on the idea that citizens of the United States cannot be denied the privilege of meeting to discuss federal laws like the National Labor Relations Act.

Only in one recent decision (if the majority view in the *Meadowmoor Dairies Case* is disregarded) has the trend of the foregoing roster of civil liberty affirmations been broken. On June 3, 1940, in *Minersville School District v. Gobitis*,²⁹ the Supreme Court upheld a Pennsylvania law that on pain of expulsion from school required all children therein to salute the flag. In the situation at hand, the grounds of refusal were sectarian, not political. "A grave responsibility confronts this Court," said Justice Frankfurter for the troubled majority (the Lowlands had been invaded, it should be noted, and France was tottering), "whenever in the course of litigation it must reconcile the conflicting claims of liberty and authority." He added that "when the liberty invoked is liberty of conscience, and

²⁵299 U.S. 353.

²⁶301 U.S. 242.

²⁷In the same general stream belongs such a case under the equal protection clause of the Fourteenth Amendment as *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337, 352 (1938), which opened the law school of a state university to a Negro "in the absence of other and proper provision for his legal training within the state," thus cautiously revising the doctrine of "separate but equal" facilities by which the Supreme Court had condoned "Jim Crowism" under state law. Even more emblematic of the Court's attitude have been cases since 1935, culminating in *Smith v. Texas* late in 1940, 61 S. Ct. 164, which have held that the requirements of the Fourteenth Amendment are not satisfied when Negroes do not in fact appear on juries in neighbourhoods where many Negroes are living. So, too, the Court has been significantly critical of forced confessions, as evidenced in *Chambers v. Florida*, 309 U.S. 227 (1940). This does not necessarily mean that the scruples of the Court always prevail at the circumference of justice where law enforcement goes on in practice.

²⁸307 U.S. 496 (1939).

²⁹310 U.S. 586. Justice Stone, dissenting, said of the law: "It does more than suppress freedom of speech and more than prohibit the free exercise of religion. . . . For by this law the state seeks to coerce these children to express a sentiment which, as they interpret it, they do not entertain, and which violates their deepest religious convictions." Besides, he suggested, "there are other ways to teach loyalty and patriotism."

the authority is authority to safeguard the nation's fellowship, judicial conscience is put to its severest test."

Whatever may be the future hesitations of the Court amid the dilemmas of our time, it can be said generally of the notable judicial fruitage of recent years that while the Fourteenth Amendment has been weakened as a substantive restraint on the power of the states to legislate on economic matters, it has been given content as a guarantee of civil liberties, including rights of agitation. An interesting question is thus posed. Can judicial review withdraw on the one side while it advances on the other? At bottom the issue is whether it is possible in modern societies to distinguish control of things and control of persons, exercising the first vigorously and the second only with the greatest caution or not at all. On this question some will stand with a conservative though flexibly minded member of the present Supreme Court who has said both must be protected or none.³⁰ This is the strategic appeal of defenders of property in an age of change and terror. The distinction between control of things and of persons is perhaps the most difficult task of future polity; it is likewise the noblest and the most necessary. In a partial way, at least, the majority of the Supreme Court seems willing to attempt a separation; so, while legislatures are being blocked rigorously in one direction, they are being given free passage through the Fourteenth Amendment in the other.

The second phase of the liberation of the states involves the interpretation of the commerce clause. Congress has power "to regulate commerce with foreign nations and among the several states." How far is this a restriction on the states? The general rule of the federal system in the United States allows powers to be concurrent, apart from a few, like control of foreign relations, which are expressly vested in the nation alone. But there were strong historical reasons for regarding the grant of power over commerce to the central government as intended to withdraw control from the states.

Judicial interpretation pursued a fluctuating course. The dictum of exclusiveness sounded by Chief Justice Marshall gave way to the concurrent view from the middle thirties to the eighties. The tide again

³⁰*St. Josephs Stockyards Co. v. U.S.*, 298 U.S. 38, 49 (1936), wherein Justice Roberts remarked: "It is said that we can retain judicial authority to examine the weight of the evidence when the question concerns the right of personal liberty. But if this be so, it is not because we are privileged to perform our judicial duty in that case and for reasons of convenience to disregard it in others."

ran strongly against the states after 1886. Two partly conflicting currents combined in this result: the hostility of a laissez-faire period toward governmental action; and a growing awareness that, if there was to be regulation at all, matters like railroading must be approached as wholes.

The consequences were reflected in the numerous instances where congressional action on a certain subject was presaged by a decision holding that the states could not act on that matter. Three historic cases illustrate this familiar sequence. *Wabash, St. Louis, and Pacific Railroad Company v. U.S.*³¹ in 1886 so limited the power of states over railways that the consummation of the movement for passage of the Interstate Commerce Act was unavoidable. The case of *Buck v. Kuykendall*³² in 1925, holding that interstate motor vehicle traffic for hire could not be regulated by the states on economic as distinguished from safety and other physical grounds, made inevitable federal motor carrier legislation, finally passed in 1935. Similarly the federal regulation of the interstate transmission of electrical power, established in 1935, was foreshadowed by the decision in *Public Utility Commission v. Attleboro Steam and Electric Company*³³ in 1927, which held that a state could not regulate the interstate transmission of electricity in wholesale quantities.

On the relation of state power to interstate commerce three viewpoints have been possible. First, that the power of Congress is exclusive and that Congress cannot delegate it. Second, that the power is not exclusive if Congress cares to permit state action but that such permission must be expressly given. Third, that such permission is implied in the silence of Congress, so that, until the central government has occupied a field of commerce or enacted a specific bar, the states may legislate in ways that do not impose unreasonable burdens.

The first of these views is in eclipse. The second has been reflected in a number of cases upholding Acts of Congress that divested certain articles, on their arrival in a state, of any immunity from state regulation that they might have as objects of interstate commerce.³⁴ The advan-

³¹118 U.S. 557.

³²267 U.S. 307.

³³273 U.S. 93.

³⁴In this sequence, applicable to the control of intoxicating liquors, were *In re Rahrer*, 140 U.S. 545 (1891), *Clark Distilling Company v. Western Maryland Railroad Company*, 242 U.S. 311 (1917), and *U.S. v. Hill*, 248 U.S. 420 (1919); and regarding control of convict-made goods, *Whitfield v. Ohio*, 297 U.S. 431 (1936), and *Kentucky Whip and Collar Company v. Illinois Central Railroad Company*, 299 U.S. 334 (1937).

tage of this second viewpoint, under which Congress must speak to give consent, is that a framework of national policy can be erected. But the Court as constituted shows a tendency to go further and to hold that the silence of Congress is consent enough. In much of this the philosophy of economic deconcentration notably associated with Louis Brandeis breathes in the undertones of the bench.³⁵ But, in fairness, the Supreme Court's new tolerance of state interference with trade must be stated temperately. This tolerance is qualified by a viewpoint illustrated in the thoughtful effort of Justice Stone, for example, to distinguish kinds of state action which have extra-territorial effect and are properly subject to federal veto from those which are confined within the state and may be allowed to stand subject to correction by local political processes.

Below all legal aspects of the liberation of the states lies the question of the evaluation of the policy itself: whether (assuming the drastic projection of various incipient possibilities) constitutional freedom of action for state legislatures would be a sound main approach to the contemporary problems of federalism?

The following limitations are at once apparent. High-standard states, which under the theory of state liberation (to be implemented when necessary by congressional Acts divesting articles of immunity gained in interstate commerce) would exercise leadership by barring the goods of low-standard regions, might hesitate to do so and even to maintain their own standards. For their leverage would be uncertain; low-standard producing areas might forgo the better markets, contenting themselves with their own or seeking outlets abroad. Administratively, too, it would be difficult to extend the standards of particular states as a measure of the conduct of others. Separate and unaided state action, moreover, seems incapable of dealing with the economic entities of modern industrialism. Nor do all of the states possess within their borders the basis in taxation for adequate services. The country as a

³⁵In the interplay of conflicting tendencies within the new majority of the Supreme Court it is possible to cite contrasting undertones from adjacent cases. On December 16, 1940, speaking for the majority of the Court (three dissenting) in *Wisconsin v. J. C. Penney Company*, 61 S. Ct. 246, 250, Justice Frankfurter spoke of the danger of "imprisoning the taxing power of the states" by formulas derived from the attempt to protect interstate commerce. On December 23, 1940, in *Best and Company v. Maxwell*, 61 S. Ct. 334, 336, Justice Reed, for the Court, said: "The freedom of commerce which allows the merchants of each state a regional or national market for their goods is not to be fettered by legislation, the actual effect of which is to discriminate in favor of intrastate businesses, whatever may be the ostensible reach of the language."

whole, finally, cannot be indifferent to the deteriorating influences likely to spread, however indirectly, from states lax in regulative standards or weak in services like education and health.

The degree of the reality of the foregoing risks depends largely upon the economic strains which appear as competition among states. The manifestations are many. State policy, in the first place, may seek to attract industry, or to hold existing industry, by the negative methods of low tax rates, easy regulation, and the avoidance of governmental action which, directly or subtly, contributes to labour militancy; or state policy may utilize the positive inducements of subsidy and of statutes that outlaw certain labour union activities.³⁶ Competitive state policy, in the second place, may seek by the same methods to enlarge the export trade of any section by keeping down its costs of production. State policy, in the third place, may attempt to keep certain natural resources at home, although usually (as when the export of power³⁷ or unshocked shrimps³⁸ is forbidden) this is for the purpose of encouraging processing within the state prior to export. Finally, barriers are erected against the movement of things and of persons into a state. This policy, needless to say, is sometimes motivated by the attempt of small-scale, independent business to defend itself against larger entities like chain-store systems. Few aspects of federalism have received more attention in the United States during the last three years than the question of interstate trade barriers.³⁹ There is optimism that the increase of such

³⁶The dynamics of capital migration are insufficiently understood. Many state and local inquiries are under way; most of these reflect sectional anxieties. What may be a significant analysis has started as the Industrial Location Study of the National Resources Planning Board.

³⁷The constitutionality of a long-standing Maine provision which forbids corporations, unless authorized by special legislative Act, to export from the state electric current generated by waterpower, has not been tested judicially. In 1923 a majority of the Supreme Court ruled against the direct attempt of West Virginia to restrict the export of natural gas (*Pennsylvania v. West Virginia*, 262 U.S. 553). Justices Holmes and Brandeis were among the three dissenting.

³⁸*Foster Packing Company v. Haydel*, 278 U.S. 1 (1928) invalidated the "Shrimp Act" of Louisiana on the ground that, although "the state might have retained the shrimp for consumption in the state," the purpose of the Act was "to favor the canning of the meat and the manufacture of bran in Louisiana."

³⁹For a partial bibliography, see U.S. Department of Commerce, Inquiry Reference Service, "Recent Publications on Barriers to Interstate Trade" (comp. by H. P. Warhurst of the Marketing Research Division of the Bureau of Foreign and Domestic Commerce, Dec. 18, 1940). In January, 1941, the informal interdepartmental Committee on Interstate Trade Barriers, under the auspices of the Department of Commerce,

barriers has been slowed if not stopped. But the extent and crescendo of the discussion are clues to the prevalence of numerous forms of stoppage. So far as their mounting use has been blocked, it is important to note that this has occurred in a time of vigorous national policy, both in regulation and in service.

A condition foreseen by Frederick Jackson Turner may well be realized. Sectionalism in the United States has been distinctively economic. Its spirit, in a phrase, has been commodity consciousness. As an economic force that is particularistic in nature, sectionalism in the United States can survive in the face of increasing cultural standardization. Turner argued that sectionalism might actually increase as the country began to press on its resources, while the former large-scale interstate movements of persons were lacking.⁴⁰ There is portent and warning in this observation for those who, in tightening times, propose to throw burdens on liberated states.

But before the liberation of the states for positive action is declared an impracticable main approach to the problem of federalism, it is necessary to note the belief of some that voluntary co-operation among states can be sufficiently developed to offset the disadvantages of separate state action.

The developments of such co-operation have been substantial. The states until recently did not have means of mutual contact which were general, organic, and continuous. Nation-wide associations of state officers long existed but those that were most successful were concerned with relatively specialized techniques. Within the last decade the Council of State Governments has grown out of the American Legislators Association to offer a link available for all sorts of questions which are organically related to the political and administrative branches of the several states through joint commissions on interstate co-operation.⁴¹ Some of the achievements of the Council are truly brilliant but the range of practical influence remains uncertain. The scheme is experimental, moreover, in the sense that it has not yet been demonstrated that the states themselves will be willing wholly to support the secretariat, which still depends preponderantly on private foundation financing.

issued an "outline of certain factors involved in the study of the interstate trade barriers question," including collaboration with the Council of State Governments.

⁴⁰*The Significance of Sections in American History* (New York, 1932).

⁴¹See *The Book of the States*, published in Chicago annually by the Council, and *State Government*, its monthly magazine. For general background, see W. Brooke Graves, *Uniform State Action* (Chapel Hill, 1934).

The general movement of which the Council of State Governments is the symbol and most important single instrument hesitates, as it were, between two ideological destinations. Will interstate co-operation be offered as a substitute for national action or as a complement thereto, which will merge in a larger co-operative design? So far, there have been assertions of state self-reliance but little intransigence in practice. Recently, the secretariat of the Council of State Governments has largely staffed the Division of State and Local Co-operation of the Advisory Commission to the Council of National Defense (now in the Office of Emergency Management), which has stimulated the creation of councils of defence in the several states. This experience may deepen the realization that co-operation within the federal system is vertical as well as horizontal and that the two dimensions yield a triangle.

Certainly there is little to warrant confidence that states by themselves can through co-operation achieve uniform and concerted attacks on economic matters. The interstate compact, for example, has been effective regionally, mainly for directly physical arrangements where the problems are those of contiguity itself and where there are few fundamental points of economic variance to offset the sense of mutual convenience. But some of the most troublesome economic frictions in the United States are not within regions; they are between regions. A lesson could be learned, if lesson was needed, from the speedy discrediting of the attempt about 1935 to arrange interstate compacts on labour standards. In the regulation of oil production, wherein state prorating proceeds on the basis of an interstate compact, the common interest of producers is steadied by national participation in the plan of control.

Nor are the limitations on exclusively state action, even when bulkwarked by co-operation, confined to the difficulties of concert in policing industry. Interstate co-operation cannot supply the need for over-all equalization in the provision of services. It would be different if the United States could look forward to such a spread of industry that the economy would be mixed and balanced in all parts of the country. Estimates about the long-run future must figure prominently in any evaluation of federalism. The probabilities were thus stated in 1935: "The recorded changes represent for the most part not a scattering of factories up and down the length of the land, but a gradual and limited spreading and filling out of the industrial pattern within the major manufacturing regions."⁴²

⁴²D. D. Creamer, *Is Industry Decentralizing?* (Philadelphia, London, 1935).

Conceivably a reduction in the number of states, with a vast increase in their area, might make them heterogeneous and balanced enough to accomplish equalization within their borders. But, in seeking self-support for states, this arrangement would sacrifice the other value pursued by federalism: that the constituent states or provinces will be homogeneous enough to serve as areas of self-expression. If we sought the latter end in the United States, metropolitan cities and their environments would be made city-states. Such a step would throw the responsibilities of over-all fiscal adjustment even more completely than now on the central government.

III

Having questioned the efficacy of solutions for federal problems that stress the liberation of states and their action in co-operation, the analysis is led to the use and adequacy of national power, first, in the conduct of regulation and, second, in the support of services.

Are there now any important economic relations that the central government cannot at least touch through its power over interstate and foreign commerce? The probable answer is no. It is unnecessary to trace in detail the Supreme Court's precipitous withdrawal from the ground it took in 1935 and 1936 when holding invalid, among other congressional laws, the National Industrial Recovery Act,⁴³ the Railroad Retirement Act,⁴⁴ the first Agricultural Adjustment Act,⁴⁵ and the first Bituminous Coal Commission Act.⁴⁶ A turning point was the upholding in 1937 of the National Labor Relations Act,⁴⁷ but, momentous though it was, this decision could be said to rest on the idea that, if strikes are not avoided, they lead to a physical stoppage of the movement of goods into interstate commerce. Such an idea was in line with the doctrine that the power of Congress over commerce is one of facilitation, not restriction, unless the articles moving in commerce are bad in themselves. It remained for the decisions of February 3, 1941, upholding the Fair Labor Standards (Wage and Hour) Act of 1938, to free the commerce power of this narrowing connotation.⁴⁸ The power to regulate com-

⁴³*Schechter Poultry Corporation v. U.S.*, 295 U.S. 495 (1935).

⁴⁴*Railroad Retirement Board v. Alton Railroad Company*, 295 U.S. 330 (1935).

⁴⁵*United States v. Butler*, 297 U.S. 1 (1936).

⁴⁶*Carter v. Carter Coal Company*, 298 U.S. 238 (1936).

⁴⁷*National Labor Relations Board v. Jones and Laughlin Steel Corporation*, 301 U.S. 1.

⁴⁸*U.S. v. F. W. Darby Lumber Co., et al.*, 61 S. Ct. 451. On the same day, in *Opp Cotton Mills, Inc. v. Administrator of the Wage and Hour Division of the Department of Labor*, 61 S. Ct. 545, the Supreme Court sustained the procedure by which the Admin-

merce, said the Court through Justice Stone, "extends not only to those regulations which aid, foster and protect the commerce, but embraces those which prohibit it." The *Child Labor Case* of 1918⁴⁹ was expressly overruled. Of this the Court said that "the distinction on which the decision was rested, that Congressional power to prohibit interstate commerce is limited to articles which in themselves have some harmful or deleterious property—a distinction which was novel when made and unsupported by any provision of the Constitution—has long since been abandoned."

The new zest for loose construction was also evidenced by the decision of December 16, 1940, in which the licensing of water-power sites by the Federal Power Commission was upheld, after fifteen years of litigation, in an opinion which pushed the concerns of the commerce clause beyond the narrow question of navigability to include "national planning"—the Court's own phrase.⁵⁰

Meanwhile, in 1939, the Court—which in 1936 held agriculture to be "local"—had sustained the part of the Agricultural Marketing Act of 1938 which (among other controls) based a system of compulsory production quotas on the commerce power.⁵¹ And in May, 1940, the second Bituminous Coal Act, with its scheme of minimum prices, was upheld under the commerce power, along with the associated device of penalty taxation to induce membership in the code group of what is at least temporarily a partially cartelized industry.⁵²

In these cases, needless to say, the Court has not abandoned the prerogative of judgment. "Mathematical or rigid formulas . . . are not provided by the great concepts of the Constitution, such as 'interstate commerce,' 'due process,' 'equal protection,'" it was said in 1938.⁵³ The Court continued: "In maintaining the balance of the constitutional grants and limitations, it is inevitable that we should define their appli-

istrator, on recommendation of industry committees appointed by him, can by order hasten for particular industries the movement toward the minimum of forty cents an hour provided in the Act as the eventual universal requirement. In the meantime the general minimum is thirty cents.

⁴⁹*Hammer v. Dagenhart*, 247 U.S. 251.

⁵⁰*United States v. Appalachian Electric Power Company*, 61 S. Ct. 291, 308.

⁵¹*Mulford v. Smith*, 307 U.S. 38.

⁵²*Sunshine Anthracite Coal Company v. Adkins*, 310 U.S. 381. The Act as revised did not contain the labour provisions attacked in the earlier version.

⁵³*Santa Cruz Fruit Packing Company v. National Labor Relations Board*, 303 U.S. 453, 467.

cation in the gradual process of inclusion and exclusion." But the landmarks of recent years seem to make all economic concerns reasonably to be called important subject to the regulative touch of the central government.

But, even if the central government is able to touch nearly everything that is important, can it deal with such matters comprehensively? Or do the intrastate phases remain beyond the reach of its arm? How considerable the intrastate phase of any matter may be was illustrated by the fact that, twenty-five years after the passage of the Meat Inspection Act of 1906, 60 per cent of meat slaughtered in the United States was not subject to federal inspection. Here an invidious competition was engendered between the inspected and the uninspected elements of the industry. It was significant that, on the heels of the Supreme Court decision upholding the Fair Labor Standards Act of 1938, which includes a prohibition against the products of child labour in interstate commerce, the administrator has urged the ratification of the child labour amendment to the national constitution (pending before the states since 1924) in order to make possible the full outlawry of child labour.

The problem of complete coverage raises troublesome issues for the statecraft of federalism. The alternatives are several nor will any one suffice for all types of control. Constitutional amendments may be necessary to subject certain whole fields to standard control. It is possible, however, that in other fields the commerce power will be construed to assimilate intrastate to interstate phases on grounds of inextricable connection. This is virtually achieved in radio control; it is far advanced in the regulation of aeronautics; it exists in outline in the supervision of railroads. The doctrinal basis has been laid for further amalgamations. Early in 1941, however, a divided Supreme Court (in which the majority significantly spoke through Justice Frankfurter) declined to apply the logic of the railroad precedents to an attempt of the Federal Trade Commission to forbid an intrastate trade practice that disadvantaged interstate commerce.⁵⁴

But alternatives that point in the direction of a monopoly of legislative power over certain matters at the centre of government are not the only possibilities nor always the desirable solutions of the problem of complete coverage. Another type of answer is the adoption by the states of national standards, with what amounts to a delegation of the task of enforcement to the nation—a scheme illustrated in incipient

⁵⁴*Federal Trade Commission v. Bunte Brothers*, 61 S. Ct. 580.

form in state aviation laws. A fourth method involves state enactments substantially similar to national Acts but with state enforcement, as in a number of state labour relations laws copied largely from the congressional statute of 1935.

The requirements differ for each type of regulatory activity. The strategies that must guide future choices among alternatives call for study not yet conducted in a sufficiently broad frame of reference and with enough attention to practical consequences. In some fields it will be the course of wisdom to force a comprehensive merger of powers. But mostly some opportunity for adaptation is desirable. Here intergovernmental collaboration is fruitful of arrangements. The United States, alive at last to the administrative side of federalism,⁵⁵ might now easily exaggerate the importance of national-state co-operation, perhaps confusing the expedient with the ideal. But co-operation affords union where there is hardly need or place for unity. It has the practical advantages of accommodation, yet it draws on the standardizing instincts of functional leadership. But the cohesion of mere co-operation is limited; without further cement it will not bear heavy weights. The Fair Labor Standards (Wage and Hour) Act proposes to increase the coverage of its inspection by borrowing state personnel with their consent.⁵⁶ Significantly, it authorizes the reimbursement of the states for such services. Nor will even such cement suffice when government intervenes in situations of acute social strain, unless national legislation is ample in coverage and is accompanied by the possibility of direct administration.

National leadership has been discussed in terms of the potential scope of regulatory action. It is timely to consider its relation to the maintenance of costly governmental services.

The flexibility of federalism in the United States has resulted in large degree from what is called the "spending power of Congress." The Constitution links it to general welfare by stating that "the Congress shall have power to lay and collect taxes . . . to pay the debts and provide for the common defense and general welfare of the United States. . . ." Long and often the subject of bitter political controversy,

⁵⁵Jane P. Clark, *The Rise of a New Federalism* (New York, 1938); see also the symposium on "Intergovernmental Relations in the United States" (*Annals of American Academy of Political and Social Science*, vol. 207, Jan. 1940).

⁵⁶See J. B. Andrews, "Labor Law Administration in North Carolina—A Study of Federal-state Cooperation" (*American Labor Legislation Review*, Sept. 1940, pp. 125-44).

the power of Congress to finance non-coercive activities of the central government or to make grants-in-aid has almost escaped judicial challenge. Superficially considered, the reasons for this have been technically jurisdictional. While grants-in-aid were made from the national domain, the government's bestowals could be regarded as those of a proprietor. Nor was it easy to establish the right to challenge money grants. Individual taxpayers, it was said, have no standing to object to an expenditure, for their relatively minute contributions pass into the general treasury before they flow out for particular purposes.⁵⁷ Nor have states grounds for complaint when a conditional grant is offered to them; they need not accept it.⁵⁸ It remained to be seen whether the Supreme Court would give standing to the displaced or disadvantaged competitors of a governmental activity supported in whole or part with federal funds. This possibility was dispelled when the Supreme Court in 1938 declined to permit private utilities not operating under exclusive franchises to challenge the loans and grants made by the Public Works Administration to municipal and other public electric plants.⁵⁹ The grounds of refusal were strengthened in the second *Tennessee Valley Authority Case* in 1939, where the matter at stake was not merely the authority to build dams in the bed of the river but also the existence of a network of facilities and contractual relations for the supply of neighbouring cities.⁶⁰

In only one case—*Butler v. U.S.* in 1936, which nullified the first Agricultural Adjustment Act—has the Supreme Court invalidated a scheme of expenditure on the ground that it went beyond the matters over which Congress's enumerated powers confer coercive control. Here benefits were paid to farmers under individual contracts when acreage was curtailed pursuant to a national plan. The fund for the purpose was drawn from taxes on the processing of foodstuffs; this fact afforded the opening for a legal challenge. The Court conceded that the spending power may be used for the general welfare which is not confined to matters over which regulatory power has been given. But the meaning of "general," it was said, is for the Court in the end to decide. Agri-

⁵⁷ *Frothingham v. Mellon* (argued and decided with *Massachusetts v. Mellon*), 262 U.S. 447 (1923).

⁵⁸ *Massachusetts v. Mellon*, 262 U.S. 447 (1923).

⁵⁹ *Alabama Power Company v. Ickes*, 302 U.S. 464; *Duke Power Company v. Greenwood County*, 302 U.S. 485.

⁶⁰ *Tennessee Electric Power Company v. Tennessee Valley Authority*, 306 U.S. 118.

cultural production, however widespread its problems, was not "general." The bonuses paid to farmers were so attractive, said the Court, that they could not be forgone. Therefore their use amounted to regulation of a matter which, being local, lay within the reserved powers of the states and could only be regulated by them. But as quickly as the next year, in a series of cases⁶¹ that upheld the arrangements of the Social Security Act of 1935 for unemployment insurance and old age benefits, the Supreme Court virtually erased the effects of the *Butler Case*.

The tremendous issues of federal finance and of countrywide equalization, therefore, are not legal but are political and administrative. They are continuous through the whole social fabric, being as much questions of a state-local as of national-state relationships. Despite the existence of much technical analysis of great value, it must be said that the United States is just coming to grips with these issues.

The methods of fiscal adjustment possible within a federal system include the following. First, there may be a calculated separation of tax sources for different levels of government. Second, there may be administrative co-operation in the separate use of common sources. Third, yields of centrally collected taxes may be shared by apportioning them to localities on the basis of the amounts collected. Fourth, the yield of centrally collected taxes may be distributed without reference to source as unconditional grants. Fifth, such grants may be conditional, usually in the double sense of being applied to stated purposes and being attended by supervision. Sixth, it is possible for the central government to enlarge the services that it conducts directly.

At the cost of an over-simplification that will seem reckless, and this in fields of extreme technical difficulty which are also dangerously matters of opinion (being beset by the conflicting values that inhere in the question of local self-government), it is perhaps useful to set down the choices that practice in the United States seems to be making among the foregoing alternatives.

The overlapping of taxes imposed by different levels of government is a matter of justifiably acute concern but the separation of sources of revenue is not a solution of the main intergovernmental fiscal problem. The struggle among the various jurisdictions for lucrative taxes goes forward and the mounting pressure brings recurrent spasms of attention.

⁶¹*Carmichael v. Southern Coal and Coke Company*, 301 U.S. 548; *Steward Machine Company v. Davis*, 301 U.S. 548; *Helvering v. Davis*, 301 U.S. 619.

The United States, for example, is entering a period of unusually active official discussion of national-state tax relations. In the past *modi vivendi* have usually come in practice when some tax source simply would not bear further exploitation; thus many states withdrew in favour of local governments from general property taxation. Like administrative co-operation in revenue matters, intergovernmental negotiations on tax sources can bring minor segregations which cumulatively promote justice and facilitate collection. But experience in the United States seems to indicate that the general drift is toward intergovernmental sharing of sources, not away from it. This need not mean, and should not mean, duplicate taxation imposed separately by different overlapping levels of government.

Taxes centrally collected and shared on the basis of the place of payment have the advantage of convenience. But they cannot accomplish genuine equalization, however much they sometimes create the illusion of that result. Related to the shared tax is the draw-back or credit illustrated in the United States by the federal estate tax law, which permits credits up to 80 per cent of the federal tax for amounts paid under state inheritance taxes. Such a device stabilizes the use of direct forms of taxation by local units, protecting them against what might otherwise be fatal competition at the hands of tax-free jurisdictions. But sharing of taxes and draw-backs alike benefit local areas only to the extent that they have taxable wealth within their borders; and, whatever the verbiage, such wealth must be in the form of current income, for in cash taxes must be paid.

In proceeding to types of revenue-sharing which respect the location of the need for expenditure, not the source of the revenue, it is appropriate to take account of an important new factor in the sectionalism of politics in the United States. During the decades prior to the economic depression of 1929 the states' rights sentiment had shifted. It was ironically but understandably strongest in regions of erstwhile nationalism.⁶² Embattled personality was at the core of this defensive movement; business restive in fear of further regulation was an ally; and so

⁶²On the basic Federal Aid Road Act of 1916, for example, against 283 favourable votes in the House of Representatives, only 81 negative votes were cast; but 59 of these were Republican and 20 were Democratic, while the urban concentration was striking. New York cast 22 votes in opposition, 4 in favour; Massachusetts, 15 in opposition, one in favour; New Jersey, 5 in opposition, one in favour. This, remember, was under the rising sun of the automobile industry, with easy transportation a matter of national faith and almost of public worship.

long as national prohibition existed support was given by small people deprived of their beer. Up to that point in the history of the United States federal aid had been directed largely to the succour of the countryside. The depression and the tide of social amelioration that followed brought federal aid into the cities: in relief, in work relief, in public works, in slum-clearance housing for low-income families. Metropolitan masses have a new stake in national government. The big cities, when led by popular spokesmen, have been the most potent phalanx behind federal appropriations for the purposes mentioned, to be extended through the newer forms of direct national-local relationship that by-pass the rurally dominated states. The paradox of the situation is that the city proletariats, though drawing at the moment on the borrowing power of the nation, are ultimately using its taxing power to reach the wealth that lies within the cities themselves. Probably if the great cities could be fortified (by draw-backs or some related device) in the use of taxes like the income tax, they would be satisfied.⁶³ But this fiscal arrangement would not embrace the equalizing needs of the United States as a society.

This brings the discussion to federal aid and raises in the background the issue of conditional and unconditional subsidies. With the latter the United States has had practically no experience. Federal aid has been conditional.⁶⁴ Its rationale in the past has been more administrative than fiscal, although the politics of federal aid have largely turned on the grievance of the tax-paying areas. National grants-in-aid have been a stimulative device; they have universalized certain activities in which only a few states had pioneered; they have been a method for hastening and broadening innovations; they have been an instrument of enthusiasm. Often, therefore, they have been deliberately temporary. When permanent they have energized supervision and co-ordination. But in the past national grants-in-aid have not been massive enough to count notably in the total equalization of governmental services and costs in the United States. In using such subventions, therefore, the primary emphasis did not have to rest on the criteria of need as contrasted with the criteria of performance.

⁶³See, for example, the argument of Mayor LaGuardia of New York City before the New York Board of Trade as reported in the *New York Times* of Jan. 11, 1940, proposing tax-unification with a combination of sharing-by-source and draw-backs.

⁶⁴Outstanding in a rapidly increasing literature is V. O. Key, Jr., *The Administration of Federal Grants to States* (Chicago, 1937).

The perspective is changing. Federal aid has increased so rapidly that, whereas in 1930 there were annual grants to states of only \$130,000,000 (half being for highways and nearly one-fourth for the national guard), in the fiscal year that ended in June, 1939, federal grants aggregated \$582,519,319.⁶⁵ This total, moreover, did not include the vast work-relief programme—itself a novel kind of federal aid in which the grants to the sponsoring governments, mostly local, take the form of a supervised labour supply—for which fourteen and a half billion dollars have been appropriated by Congress since early in 1935 as the national government's main contribution to able-bodied needy persons unemployed because of general economic conditions.⁶⁶ Nor did the total include the forms of aid embodied in non-relief public works and subsidized housing.

The present trends in the reshaping of federal grants-in-aid are affected by the interplay of the implication of their increasing mass, sharpened attention to the objectives of equalization, and the teaching of administrative experience. Three broad tendencies deserve mention.

First, it is likely that the particularity characteristic of the stimulative use of grants (as for vocational education)⁶⁷ will be corrected. The narrow segregation of the purposes of grants has been the especial source of the complaint that grants-in-aid distort state and local budgets. Functional union, projected down through the levels of government, has been in conflict with the principle of administrative integration in state and local units. Logically the tendency away from grants for narrowly specified purposes may seem to point to a single system of unconditional subsidies distributed on the basis of some grand index of need. But this eventuality is not in sight nor is it desirable where effective administration must be sought through the combination of conflicting but not irreconcilable principles of structure. Within the predictable future in the United States a working compromise is likely to be sought by a calculated broadening of the purposes for which supervised subsidies

⁶⁵Austin F. Macdonald, who has done pioneer work in the analysis of federal aid in the United States, has summarized recent tendencies in "Federal Aid to the States: 1940 Model" (*American Political Science Review*, April, 1940, vol. XXXIV, pp. 489-99).

⁶⁶Arthur MacMahon, J. D. Millett, and Gladys Ogden, *The Administration of Federal Work Relief* (Chicago, 1941).

⁶⁷The problem of narrowly specified grants as it arises within functional fields was illustrated in the *Report* of the Presidentially-appointed Advisory Committee on Education, which was transmitted to Congress on February 23, 1938.

are given, not in the abandonment of conditional for unconditional grants.

Second, it is increasingly recognized that the techniques devised when the primary emphasis is on stimulation are not wholly suited to equalization, now seen as the long-run criterion in an enlarging volume of grants-in-aid. It is typical of a stimulative system, for example, to apportion the fund that is to be granted (usually with some regard to a crude measure of need, such as population) and to require the local matching of the central government's contribution. Or the central government may agree to contribute a fixed proportion of expenditures up to a certain amount. Needy areas suffer relatively from such processes. Their predicament may actually be deepened by methods of apportionment which, in one way or another, put primary emphasis upon performance. The analytical basis is now being laid in the United States for what will probably be a fundamental though slow recasting of many of the methods of subsidy in order to channel aid to the point of need.⁶⁸

Third, on the administrative side of grants-in-aid, the evolution of supervision will probably yield a wholesome paradox. Tighter standards regarding the crucial prerequisites of administration, such as personnel, may well be accompanied by a relaxation in the prescription of detailed procedures. In recent years the requirement of merit recruitment and tenure for state and local personnel engaged in the co-operative fields of social security (though attended by complications due in part to the variable and usually backward conditions in the civil services of state and local units) has been the outstanding development in the administration of federal grants-in-aid.

Confidence in the improvement of grants-in-aid, needless to say, should not imply their fatalistic continuance in domains like unemployment insurance,⁶⁹ where the nature of unemployment itself, the movement

⁶⁸An unusually thoughtful and suggestive interpretation of a phase of the problem is William Withers, *Financing Economic Security in the United States* (New York, 1939).

⁶⁹R. C. Atkinson, in *The Federal Role in Unemployment Compensation Administration* (Washington, 1941; a report prepared for the Committee on Social Security of the Social Science Research Council), p. 183, concludes: "The very measures required to remedy the defects and close the gaps in a federal-state system would tend for the most part to render it more complicated and cumbersome. The needs of the country could be served better and more efficiently by a single national system of unemployment insurance, with unified administration of payroll taxes and a largely unified system of wage reporting and record keeping for unemployment insurance and old-age and survivors insurance."

of persons, the concept of insurance, and the inherent complexities that are multiplied by variant systems make a cogent case for outright national administration, now that the particular reasons for the selection of the joint plan in 1935 have ceased to exist.

Such are some of the problems and tendencies of federal adjustment in a national society which, though likely to be increasingly aware of interdependence in all its parts, will never escape from the fact of space. Much is obscure. But for the present the grand formula of adjustment is likely to appear as the drawing of lines of functional union across geographical divisions. So do men continue to invent things for which they have no names.

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THE FEDERAL DILEMMA¹

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ALL federal systems of government have been subjected to severe strain in recent years. It is not Canada alone that has felt the onslaught of economic and social change. The German federation went down before the Nazi tidal wave. The Australian federation was hard put to it to weather its difficulties in the early thirties. The United States of America, the greatest of them all, has been through continuous rack and strain in the past decade. What the permanent ravages of depression and the New Deal on the federal structure will be is as yet far from clear. The devices of navigation to which the national and state governments have been driven are described by some as the rise of a new federalism to meet the challenge of new conditions and by others as the destruction of the independence of the states. Observers in the other countries concerned are equally at variance in their interpretations, except, of course, in Germany where the results are fairly conclusive. There have been so many bad guesses in predicting political trends in the past few years that the prudent will hesitate to lay bets. But the nature of the predicament which generates strain in federal systems has become sufficiently clear that the main elements can be outlined with some confidence.

The founding of a federal system of government is always a compromise between two distinct and sometimes conflicting sets of political forces. First, there are the pressing common interests and purposes shared by the several separate states or provinces. These interests and purposes can only be protected by presenting a united front. They demand a union. Second, there is the desire of each of these communities to maintain its identity and preserve a large measure of its independence. In part, this desire springs from the same mysterious sources as national

¹The author is indebted to the editors of the *Canadian Banker* for permission to reprint portions of an article, entitled, "The Crisis in Federalism," which appeared in that journal.

pride and national exclusiveness. We do not yet know how to describe it or to assess its significance. In part, the desire springs from intensely practical considerations. The conditions of life and the character of the people as moulded by history and environment vary from one state or province to another. No government will ever be regarded as satisfactory which fails to take account of these differences. A government which is locally controlled is far more sensitive to the factors of uniqueness than is a central national government which is far away and pre-occupied with more general issues. This desire to arrest the reach of a distant government is the main reason for a federal system. Lacking the urgent common interests, there would, of course, be no union at all. But lacking the insistence upon a guaranteed sphere of state independence, there would be no reason for a partial union—no case at all for a federal form of government.

At its inception, then, a federal union is always a marriage of convenience—a practical, business-like arrangement with no sentimental nonsense. The parties insist upon retaining their separate identities and personalities; they do not become one flesh. Of course, with the passing of time and the running of a common household, the marriage of convenience may be transformed into the kind of marriage that is made in heaven, where the identities of the several states are merged in an indissolubly united nation. When this happens, the desire for a genuinely independent status in the several states will probably wither away. There will be no substance left in federalism if it does.

The current dilemma of federalism may now be outlined briefly. In the free trade area which a federal political system maintains, applied science, modern advances in transportation and communication, and the growth of large-scale organization have created a unified and inter-dependent economy of great complexity out of what were previously several separate, relatively simple and relatively independent economies. Parallel with this growth and in close interaction with it, has been the rapid extension of government intervention in economic and social matters. The scale of government action is now such that it affects profoundly the operation of the economy and it tends everywhere to increase rather than to diminish. This politico-economic system strains toward political centralization—a tendency which can be observed everywhere and not only in federal states.

To insist on the strength of the tendency implies neither approval nor disapproval. Whether we like it or not, it is the capital political

tendency of the present-day world. It has been going on without significant interruption for over fifty years and there is no sign of anything which is likely to arrest it. It may be said that it need not continue if men make up their minds that they do not want it to continue. It would be better to say that it need not continue if men would renounce the things which cause it. For the surest guarantee of its continuance is the fact that, on almost every hand, those who find the tendency ominous go on approving, fostering, and even defending with passion, political and economic institutions and practices which make its continuance inevitable.

The very fact of the several states becoming parts of one unified national economy cuts down the effective scope of states rights and provincial autonomy. Interdependence, by definition, reduces independence. The urge towards centralization threatens to reduce it still further. Here is the dilemma. If the several states do not resist the centralizing tendencies, the foundations of federalism may be seriously weakened. But resistance runs counter to forces so powerful, so inherent in the industrialized national economies of today that serious strain is the inevitable result. When all governments are busily intervening in economic and social matters, resistance cannot be confined to the political sphere. It spreads to the economic sphere, where failure of the state and federal governments to follow a common policy on essential points tends to frustrate and fragment the integrated economy which is one of the principal achievements of federalism. Thus, in its attempts to save itself from further centralization, a federal system is in constant danger of mutilating its own handiwork.²

The effects of economic interventionism practised by state and federal governments are many and varied. First, powers relating to economic matters given by the constitution to the federal government are of immense consequence to the member states. The character of the national economy, the direction of its growth, the role played in it by the resources of the several states, have been, and are, profoundly affected by the actions taken by the federal government under these powers. In Canada, for example, the decisions of the Dominion on railway construction and railway rates, tariff policy and tariff rates have greatly influenced the fortunes of the provinces for better or for

²The danger to the Canadian federation is underlined in a speech by Premier Bracken of Manitoba on January 27, 1941, reported in the *Winnipeg Free Press*, January 28, 1941, p. 11.

worse. Within the framework of federal policies, some provinces forged ahead while others made progress less rapidly or not at all. The complaints of the latter group of provinces about the adverse effects of Dominion policies are familiar to all. Of course, there are other elements of great importance in the failure of their prosperity such as geographical position, inferior resources, and adverse circumstances in international trade. For these and other reasons, it is impossible to make even an approximate calculation of the effects of federal policy on the different provinces. But it is equally impossible to deny that federal power affects the economic basis necessary for the effective exercise of provincial autonomy. What is done under national auspices on some theory of national benefit may have damaging, even disastrous, effects on a particular province, from the point of view of its future as an independent unit. If it becomes economically impoverished, it will be unable to finance its public services. And it cannot long retain its independence of the federal government, if it lacks the means of independence. The only effective guarantee of political autonomy is economic autonomy. Yet it is in the very nature of federalism to replace autarchy by interdependence.

Assuming the continuance of present trends, the impact of federal policy on the member states will be much greater in the future than in the past. All governments including federal governments, are tightening their grip on economic life. Almost every year, federal governments find some new form of economic regulation which it seems expedient to apply. Of these, the most important in a troubled world is undoubtedly the manipulation of the currency.

The national economy is subject to recurring disorders and maladjustments which disturb the social structure of the states and touch the heart of local affairs. Electors in the states command their governments to act against these disorders. Unfortunately, the shaping of a policy by one state without regard to what the federal government and other states are doing is likely to lead to cross-purposes. Expensive efforts by one or more states to stimulate production and employment fail because the federal government is following a deflationary policy. Such cross-purposes are not merely depression phenomena. The states, through their highway policy, subsidize motor transportation which thus gains a heavy advantage in its competition with the railways. The federal government then increases its subsidies to the railways to maintain them in existence against the competition of motor transport. There is

scarcely a policy to be adopted by one government in economic and social matters which does not affect the conditions with which other governments in the federation have to deal. As long as this continues, there will be pressure for co-ordination of policy through the federal government. In many matters, a single state cannot hope to shape an effective policy at all because many of the factors are beyond its control. If one state makes a levy on industry for maintenance of an unemployment insurance fund, it prejudices its own industries vis-a-vis industries in states which do not follow suit.³ A state cannot make fully effective a comprehensive revision of its public and private debt structure because the rights of creditors in other states are involved. Equally, a state policy for regulation of marketing within the state is seriously hampered by the constitutional requirement of free trade between the states.

It is significant of the changing environment of federalism that constitutional prohibition of interstate trade barriers is no longer enough to prevent such barriers. These restrictions on trade are made possible (I am not quite prepared to say inevitable) by the movement of the state governments into economic and social regulation. They do not take the frank form of tariffs; the constitution prevents that. Instead, they take the form of laws which the states have undoubted power to enact but which are so framed or so administered (or both) as to give domestic producers some measure of protection against other states. The power of taxation is used to single out "foreign" products and enterprises for exceptionally heavy taxation. Public health and safety laws are interpreted and administered to the disadvantage of the "foreigner." Grading and inspection and other marketing regulations are framed in such a way as to prejudice competition from other states, and so administered as to impede and discourage importers. There are other devices. The ingenuity which has gone into international trade restriction has been employed to the same end between the states in the federations.

The most alarming manifestations of this trend today are found in the United States, where the great volume and variety of interstate trade provides rich opportunities.⁴ In other federations, including Canada, it

³This is one of the many implications of an integrated economy. It is perhaps the principal reason why practically no progress was made towards unemployment insurance in the United States or Canada until the federal government took the initiative.

⁴F. E. Melder, "Trade Barriers between States" (*Annals of the American Academy of Political and Social Science*, Jan., 1940, p. 54). This number of the *Annals* is devoted to "Intergovernmental Relations in the United States" and contains many data and much discussion bearing on the subject-matter of this paper.

has reached disturbing proportions. More clearly than any other, it reveals the federal dilemma. In the passing of most of these laws, the states are merely exercising their autonomy. In most cases, it would be wrong to condemn the general principle of the law itself. States must raise taxes. It is their duty to guard public health and public safety. A great variety of marketing regulations are in the interests of both producers and consumers. The incidental restriction of trade involved in equitable enforcement of such measures does not violate the public interest. The difficulty is that there is no easy way of agreeing what restrictions are legitimately incidental and what are genuine discriminations, masquerading in other guises. Because constitutional competence is not in question and the vices, if any, generally lie in twists of discretionary administration, the courts cannot be effective umpires. Thus the issue remains a political one between states. States which find the free flow of their commerce hampered in any way are quick to sense discrimination and they retaliate by real discriminations against grievances, real or fancied. The result is a vicious circle and the trade barriers pile up to the detriment of the national economy. Parochial interests champion the restrictions and lobby for their extension. Depression and the efforts of economically declining states to save themselves add to the pile.

Because the main source of the trouble is the suspicion of discrimination, it may be doubted whether there is any solution short of substantial uniformity in the form and administration of the class of laws under discussion. However, these laws go to the heart of local affairs where the states naturally want to preserve independence of action to meet diversity of local conditions. Because conditions diverge in the several states, the interests of the states differ. As long as the interests to be safeguarded by the state governments differ there is little prospect of uniformity by agreement between the states. Except in very rare circumstances, getting uniformity of laws in a federation depends on making a successful appeal to overriding national interests. The content of the national interest must be determined through the political process in the federal sphere.

Another way of stating the dilemma is that local affairs, over which the states have control, have got entangled in a bewildering way with national affairs. In the unified economy, everything is related, more or less closely, to everything else. The source of the banking crisis and the national financial collapse in the United States in 1933 lay in the

state banks, subject solely to state control. Almost overnight, this local disturbance became a national crisis which could only be met with national action. Without entering into the controversial question which, if any, of the federal measures for restoring confidence and promoting recovery were necessary or desirable, it may be pointed out that the New Deal, with all its centralizing tendencies, probably would not have been launched on the scale it was launched had it not been for the panic arising out of the banking crisis.⁵

The New Deal is most instructive on the entanglement of local and national affairs. This scheme for widespread government intervention was a federal scheme which could only have been initiated by the federal government but many vital features of it could not be made effective without facilitating legislation enacted by the states.⁶ At almost every turn, the New Deal and associated measures exceeded the powers of Congress because they impinged on matters reserved to the states. If they were to be undertaken at all, close co-operation by the state and federal governments in legislation and administration was necessary. Enormous energy and ingenuity were employed to secure it. One indication of the scale of co-operative legislation may be given. In one year, 1937, over 100 statutes were passed by 42 states to aid the Federal Housing Administration alone.⁷ It is significant that the most extensive state co-operation was secured by those federal organizations which had money to spend. A great deal less progress was made in those fields where money could not be used effectively to grease the ways leading to co-operation. Federal financial power, if energetically used, is a powerful centralizing agency.

Of course, some do not think that the New Deal has been markedly centralizing in character. It has not stripped the states of any of their constitutional powers. Admittedly, the federal government has led but the states have followed voluntarily as partners in national action. The states have retained their independence of Washington and, at the same

⁵It may be retorted that the troubles of the state banks arose out of dislocations in the national economy. Such a retort merely emphasizes the entanglement of state and national affairs.

⁶For a detailed study of the interdependence of state and federal legislation in the United States, see Jane Perry Clark, *The Rise of a New Federalism* (New York, 1938). See also "A Symposium on Cooperative Federalism" (*Iowa Law Review*, vol. XXIII, 1928, pp. 455-616).

⁷V. O. Key, Jr., "State Legislation Facilitative of Federal Action" (*Annals of the American Academy of Political and Social Science*, Jan., 1940, p. 8).

time, are meeting the challenge of the new age which calls for a nice co-ordination of the activities of state and federal governments. This is called the new federalism, a co-operative federalism replacing the old federalism where each of the states and the national government went their separate ways without much concern about what the others were doing.⁸

On the other hand, some observers think that the New Deal and associated developments may mark the end of any real federalism in the United States. The states are no longer economic units and the material foundation of their independence is gone. Leviathan, in the form of the federal government, now occupies so dominating a position that it may well overwhelm them.⁹

It is still too early to speak with assurance about the outcome in the United States. But certain considerations applicable to all industrialized federal states may be pointed out. First, if governments are to be committed to extensive activities on the scale of the New Deal, federal states must either become unitary states or develop effective machinery for close and continuous co-operation. There must be co-operation between the states to ensure uniform, or, at least, integrated action on common problems. There must be co-operation between the states and the national government to carry out functions which neither can perform alone. The record of interstate co-operation thus far is not impressive. Interstate compacts have been highly successful in settling problems which can be settled once for all. Issues arising out of the common boundary between states provide the best illustration. They have not been nearly so successful in the field of economic regulation where the conflict of interests is sharper and where co-operation must be sustained and its terms frequently revised to meet changing circumstances.¹⁰ Relatively to the effort expended, progress in the adoption of uniform state laws has been disappointing. It is perhaps significant that, in the United States, the most marked success has been achieved in fields where the federal government took the initiative.¹¹

⁸Clark, *The Rise of a New Federalism*.

⁹On the dominance of the federal government in recent years, see W. B. Graves, "The Future of the American States" (*American Political Science Review*, vol. XXX, 1936, p. 24).

¹⁰G. C. Routt, "Interstate Compacts and Administrative Cooperation" (*Annals of the American Academy of Political and Social Science*, Jan., 1940, pp. 97-9).

¹¹R. L. Mott, "Uniform Legislation in the United States" (*ibid.*, p. 79).

Secondly, in any co-operative effort, someone must lead and in a co-operative federalism, the federal government must be the leader in most instances. The federal government has a great many relations with each of the states and therefore has many levers for moving reluctant states to agree. Thirdly, when co-operation comes to be desirable on a wide range of matters which touch the states intimately, the divergence of interests of state and federal governments becomes apparent. What the federal government thinks desirable in the national interest does not coincide with what one or more states conceive to be their interests. Indeed, it is only rarely that the wise national policy will dovetail with what the states would like to do on their own account. This is merely the obvious truth that a policy which takes account of the interests of all, either through compromise or through insistence on overriding considerations, generally satisfies none. If national and state interests did, in fact, coincide, the complex federal scheme of things would be meaningless. But, of course, they diverge on many points. The dilemma arises from the entanglement of state and national affairs following the integration of the economy and the subjection of it to the political decisions of several governments.

This entanglement of state and federal affairs goes a long way towards explaining a marked feature of Canadian politics in the last ten years—the unprecedented interest which provincial politicians have taken in federal politics. They have run the gamut of commanding, supplicating, warning, reviling, the Dominion government. No doubt this has been partly due to the clash of personalities. But the only adequate explanation is that provincial affairs have got so mixed up with federal affairs that provincial political leaders cannot keep them in separate compartments. They have been sharply criticized in some quarters for meddling in federal politics when they should be minding their own affairs. This criticism misses the point. The responsibilities which the constitution imposes on the provinces can no longer be met fully by action at the provincial capitals. Provincial political leaders have the best of reasons for crashing the gate into the federal arena.

The exigencies of the party system put serious difficulties in the way of interstate and state-federal co-operation. No one has yet explained how state governments of one political persuasion are going to co-operate harmoniously on a wide range of matters with a federal government of another political persuasion. Co-operation has now come to be desirable on many matters which implicate the essentials of party policy. Nothing

short of taking co-operative policies out of the sphere of party controversy seems likely to serve. Co-operative federalism, if it works, will greatly embarrass the party strategists who are hard put to it now to find genuine issues for election purposes. When the political parties spend much of their time working out co-operative policies with one another, each will find it harder to lay claim to a coherent body of principles of its own.

It may be less difficult to reconcile the working of the party system with co-operative federalism in the United States than in Canada because of the formal separation of policy-making from administration. The policy of the dominant party in the legislature does not impinge quite so directly on the administration of co-operative ventures as it does under the cabinet system. The significance of the difference must not be exaggerated because the difference is less in substance than in form. The very substantial degree of state-federal unity of legislation and administration achieved, at least temporarily, under the New Deal probably would not have been possible without Democratic control of most of the states. Even that was not always enough to ensure success. Very little of the desired facilitating legislation could be secured in the State of Georgia until the anti-New Deal Governor Talmadge departed from office. The party system will, at least, give co-operative federalism some anxious moments.

Another urge towards centralization is to be found in public finance. It exists in all industrialized countries today and not merely in federations. Basically, this drive is generated by the unification of the economy and by the enormous growth in government spending. It is made feasible by changes in the forms of wealth and income and in the instruments of taxation. When governments absorb a large fraction of the national income, the character of the taxation system assumes great economic importance. When several governments help themselves to as much as they want, or can get, without taking thought about the total effect of taxation on the economy, it will be a sheer accident if the result is not much more burdensome than extraction of the same total of revenues would be in a unitary state. Rational calculation of the effect of taxation on the economy is wellnigh impossible.

Moreover, for several reasons, the emphasis in taxation turns to the tapping of surplus incomes above a certain level. The bulk of such surplus income is now found in the form of extremely mobile property such as stocks, bonds, and bank balances. Substantial differences in the

character and level of taxation in the several states affect directly the location of investments and the domicile of taxpayers in an uneconomic way tending to distort the economy. When Florida promised that there would never be any inheritance tax in the state the danger that all wealthy folk with an intimation of death would take flight to Florida had to be met by the intervention of the federal government. Unrestricted competition between the states, with each trying to skim as much of this cream as possible off the economy is a further cause of friction, confusion, and inequity. In addition, the principal instruments for taxing surplus income are admirably suited for centralized collection. The most efficient way to collect such taxes is at the source and the federal government because of its wider territorial competence is the only government which can command all the sources without contrivance or subterfuge.

These arguments for centralizing the collection of certain kinds of taxes might not carry very far in practice if they were not clinched by still other considerations. Some states in a federation enjoy high prosperity while others remain or become poor relations suffering from chronic financial complaints. Today a great part of the burden of depressed economic conditions falls upon governments and the demand for public welfare services varies inversely with prosperity and revenue possibilities. Surplus incomes, out of which these services must be largely financed, tend to concentrate in the richer states where the poorer ones cannot tax them. But the federal government can tax them and it is urged to succour the needy states by doing so. A dozen different considerations push federal governments towards a dominating position in public finance.

One way of easing the predicament caused by disparity of the financial resources of the states would be for the federal government to assume full administrative responsibility for the onerous state services. Generally, however, the constitution stands in the way. In addition, aside altogether from the issue of states' rights, there are grave objections to such a step on the grounds of administrative efficiency. In these circumstances, the compromise which meets with most favour is the conditional grant. The federal government earmarks grants to the states for specific services and requires the states to provide a substantial portion of the cost out of their own revenues as a guarantee of careful administration. It lays down standards and conditions which the states must observe and imposes inspection and supervision to ensure that the

standards and conditions will be observed in practice. As employed thus far in federal states, conditional grants do not really meet the predicament. In determining the amount of the grants, federal governments have not, in any substantial way, discriminated in favour of the poorer states so as to equalize varying financial capacity. The conditional grant has not really been an instrument of equalization but rather an attempt by the federal government to get uniform state action in certain fields on a national scale. It contributes more to standardization than it does to restoration of the financial basis necessary for state autonomy.

It is commonly said that valid conclusions about conditional grants cannot be drawn from the Canadian use of them because they have never been fairly tried. It is not necessary to inquire into that contention here. The United States is generally held to have employed them in an impressive way and illustration can be drawn from that source. In 1930, these grants to the states were less than \$150 millions, assisting eleven different state activities. Emergency grants to meet the depression and the launching of the social security programme of the New Deal by means of conditional grants brought the total to about \$800 millions in 1939 and the number of aided activities to twenty-one. While the emergency grants can be expected to decline, the social security programme will involve increases for many years to come. About 15 per cent of the total revenues of the state governments now comes from federal grants.¹²

The states have been led into many new and costly policies by federal initiative. It is true that administration remains securely in the hands of state officials. But whether they administer well or ill, they are compelled to spend the federal grant and state funds as well on purposes selected by the federal government. There is no concession here to the varying genius of the states which might lead them to choose a different order of importance in public expenditure. Yet it will probably be politically impossible for any state to withdraw as long as federal aid is offered despite the fact that in the poorer states, at any rate, the diversion of state revenues to these aided activities is seriously distorting the entire state budget. Funds needed for "native" policies in the state are being drawn off for promotion of national policies framed

¹²J. P. Harris, "The Future of Federal Grants-in-Aid" (*ibid.*, p. 14); A. F. Mac-Donald, "Federal Aid, 1940 Model" (*American Political Science Review*, vol. XXXIV, 1940, p. 489).

by the federal government. This is the inevitable result until some principle is found for discriminating in the amounts allotted to different states or until the grants are made so flexible as to give the states choices in the application of them.¹³

The wide taxing powers of the federal government, if resolutely used, will help to whip the states into line. The tax-credit, as used in the United States reveals some of the possibilities. Congress may levy a particular tax uniformly in all states and at the same time promise to rebate a large percentage of the tax to all states which commit themselves to some policy which Congress thinks desirable. This device was used to compel the states to adopt some measure of uniformity in their inheritance taxes, thus remedying a chaotic situation. More recently, it has been used to get unemployment compensation schemes launched by the states. As remarked earlier, one reason why such schemes lagged in the United States was that each state feared to raise the costs of its own industries unless assured that other states would follow suit. In 1935, Congress levied a tax on the payrolls of employers of labour. It also provided that 90 per cent of this tax would be rebated to employers in states which established unemployment compensation schemes complying with certain federal requirements. In effect, a state which refused to co-operate would be penalized for its refusal. This is sheer federal coercion of the governments of states which did not approve of the policy of unemployment compensation. On the other hand, of course, it is equally a restoration of freedom of action to the states which wanted to pursue such a policy but were restrained by the uncertainty as to what other states would do. But it is a freedom created by the action of the federal government. The significant thing is that the capacity of the states to control their own destinies is everywhere declining. The tax-credit device can be used to persuade reluctant states to seek their destinies along lines prescribed by the federal government.

The federal state rests on the assumption that sovereignty in a single territory can be parcelled out among several governments which act independently of one another. The dilemma of federalism is due to the even greater difficulty of squaring this assumption with realities. What the federal government does in exercise of its powers affects the heart and centre of local affairs; what state governments do in exercise of their powers has direct effects upon the nation and the other states which cannot be ignored. The supposedly separate spheres of power are

¹³Harris, "Future of Federal Grants-in-Aid," pp. 18-23.

separate no longer. Thus, the courts in clarifying and sharpening the line of division of powers now contribute little to the solution of conflict between the governments. As long as present economic and political trends continue, there will be, on the one hand, strong pressure for effective control by the federal government over all matters with national implications while, on the other hand, the states are likely to try to recover from the federal government the range of power they need to control their own destinies. Serious strain is thus involved and pronounced movement in either direction may have serious results for federalism. States rights and provincial autonomy cannot be securely fortified without an economic foundation and this points to state autarchy and the fragmenting of the national economy. If centralization goes forward indefinitely without check, the states will lose the substance of their autonomy. They may remain as agents of the national government for the administration of national policies but they will cease to be principals operating on their own account.

Apart altogether from its effects on states' rights, indiscriminate centralization is undesirable. Many of the things which governments try to do today require continuous administration—the law has to be applied to a great variety of situations from day to day. The great federations are sprawled out over enormous areas, embracing several distinct regions with marked geographic and social peculiarities. Even when some uniformity of laws is desirable, many subtle modifications in the application of them in the different regions are equally desirable. Indeed, effective administration requires it. But the tendency of a distant central government is almost always towards a deadly uniformity—variously described as red tape and sterile bureaucracy. Governments which are closer to the spot are more sensitive to these regional differences. They have more avenues to the intimate knowledge of conditions which is necessary for imaginative administration. The minister of the distant central government who is responsible for the administration of a particular law fears to give adequate discretion to the officials on the spot because, in a democratic country, their mistakes may cost him his political career. If the rules are kept rigid, he sleeps better at night because, at least, he knows what his subordinates are doing in far-away places. If centralization is pushed too far, it will break down of its own weight.

Whoever would forecast the outcome of the dilemma must reckon—and reckon seriously—with spiritual forces. Little has been said about

them here because they are so difficult for a contemporary to assess. Historians with hindsight can speak of them with more confidence. We do not know how strong today are the local loyalties which dictated federal union rather than a unitary state in the beginning. Nor do we know how deep-rooted are the sentiments of nationalism in the federal state. These questions cannot be answered generally but can only be guessed at for each federation separately. Furthermore, we are not very sure what nationalism thinks about federalism. One observer has said that nationalism is the enemy of federalism.¹⁴ In effect, his view is that federalism is always a marriage of convenience. When the people comprised in the federation become a nation, they will be very impatient of the roundabout procedures of federalism if these get in the way of things they want to do as a nation.

On the other hand, an impressive case can be made for the view that all human society is federal in its nature, that people are always torn between the common interests which unite them and the particular interests which divide them and that the highest triumph of statecraft is to keep these divergent tendencies in equilibrium. Of course, if this view is accepted, it does not necessarily follow that the existing states in any federation will survive. It is necessary to go further and show that these states still represent genuine unities of interest and that particularism in one or other of its important manifestations will therefore rally around them rather than around some other territorial, occupational or class grouping. These issues can be stated but they cannot be answered for any existing federation in the present state of knowledge. If they could be answered, the federal dilemma would be on the way to its solution.

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¹⁴H. L. McBain, *The Living Constitution* (New York, 1927), p. 58.

CANADA AND THE BALANCE OF WORLD POWER

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POLITICAL science has not yet advanced, if indeed it ever will, to the stage where accurate measure of contemporary forces is possible; much less can it be used to predict the future. Since I deal with both the present and the future my remarks are largely a venture in political speculation rather than a discourse on political science. But I make no apology for the subject. Canada faces a difficult and dangerous future. It is our primary duty as citizens of a democracy to face the stark realities of the present crisis, and to attempt as best we can to assess this significance for our country. It is particularly the duty of those of us who by reason of our vocation can snatch time for leisured thought amid a world given over to violent action.

In the quiet days before Munich we were wont to classify Canadians who had anything to say about the external policy of their country as "imperialists," "collectivists," "isolationists," or "traditionalists." Few, if any, Canadians fitted neatly into these pigeon-holes, but the classification was convenient for distinguishing between different trends or schools of thought. But whether these were possible alternatives of policy in the pre-Munich days, it is obvious that they no longer have much validity. We have passed from the apparently static world of the twenty years' armistice to the dynamic world of the present. In war there can be only one foreign policy and that the vigorous prosecution of the war. In the post-war world our freedom of choice may be scarcely less limited.

Let us look briefly at the pre-Munich world, and then attempt to estimate the changes which are taking place. I use Munich, of course, only as a datal point because it indicated the impending collapse of the post-war European settlement. History never begins a new chapter; only historians do.

Politically the world in the interval between Versailles and Munich was founded on two great treaty settlements, that of Versailles, and that

of Washington. The Versailles settlement in the main applied to Europe the nineteenth-century concept of national self-determination. The traditional idol of sovereignty was once more restored to its pedestal and Europe was divided once again into watertight political compartments with little regard to the economic interdependence of central Europe which had developed under the unity provided by the German and Austro-Hungarian Empires.

Some attempt, however, was made to meet the realities of the modern world by the establishment of the League of Nations as an essential part of the peace settlement. But the League was crippled from birth. The dogma of national sovereignty prevented it from being an effective instrument of international police, or an effective means of altering the political *status quo*, or of controlling economic forces which militated against the new political order. The League, therefore, could assure neither political nor economic security to its members. Moreover, as originally conceived the League was intended to be a world-wide system on the assumption that peace was one and indivisible and that its maintenance should therefore be the responsibility of all member-states. But the absence of the United States made it from the first much less than a world system—it should not be forgotten that it was first successfully challenged in South America and Eastern Asia where American support was essential and effective support was not forthcoming. And with the United States out, there can be little doubt that the reluctance of such members as Canada to assume commitments for preserving order in Europe handicapped, if it did not prevent, the League from concentrating its efforts upon Europe. Further, continuous and active support by Great Britain and France was essential for the League to play an effective role in Europe. Yet British policy vacillated between support of the League system and a return to balance of power, and French policy between support of the League and the maintenance of French hegemony in Central and Western Europe which had been the immediate consequence of victory. Thus the League proved to be neither a European league nor a world league.

Nevertheless the post-Versailles Europe appeared admirably to suit the interests alike of Great Britain and of the United States. With the German fleet on the bottom at Scapa Flow British naval supremacy from the north Atlantic to Australasia was now unchallenged. Central and Western Europe was once more reduced to a collection of competing independent states and no great power or group of powers remained to

threaten France or the North Sea and Channel ports. British policy could now be conceived in terms of "business as usual." The United States had intervened ostensibly to preserve freedom of the seas, in reality to restore on the North Sea and the Atlantic British naval control behind which the United States had grown to maturity without giving much concern to defence. With a friendly British navy now unchallenged in Europe the United States could revert to its historic policy of isolation and safely withdraw behind the Atlantic as England withdrew behind the Channel after Waterloo.

The second great settlement, the Washington treaties of 1921-2, was a settlement between the victors. 1914 marks the end of Britain's proud position as mistress of the seven seas. During the war the exigencies of the international situation led to the American naval programme of a "navy second to none." Japan also resorted to naval expansion on a tremendous scale in order to maintain and extend the position of naval supremacy in Far Eastern waters to which she had succeeded with the conquest of German possessions in the Far East and Oceania and the withdrawal of most British naval units to European and Atlantic waters. The close of the war thus found a naval race in progress with Great Britain in a losing position because of the economic drain of the war. To this race the Washington Conference put a stop; first by a limitation on capital ships, both in size and number, as between the three parties; and second by a limitation on the construction of naval bases in the mid-western Pacific. The effect was to create for the first time a world balance of naval power which left Great Britain supreme in the waters from Newfoundland and Bermuda east to Singapore and Australasia; the United States on both coasts of North America, the Caribbean, and the western Pacific; Japan in the China Seas north of Hong Kong. British naval supremacy the world over had gone by the board, but the new balance of naval power established in its place provided a basis for world stability for some fifteen years. It ended with the repudiation of the Washington agreement by Japan in 1936 as tension was increasing in Europe.

Canada in the Pre-Munich World. It was in the first decade of the post-war period that Canada first essayed to play an autonomous role in world affairs. These years were in many respects the Indian summer of the nineteenth century, and Canada basked in its sunshine. Canada enjoyed greater security on her Atlantic front than she had since the beginning of the century, and there was now no apparent need for

concern about her own or the Empire's defence. After 1921 collective defence of war days gave place to decentralization of responsibility. Collective control of imperial foreign policy attempted during the latter years of the war and during the making of the peace was discarded for the widest possible autonomy in external as in internal affairs. Canada returned to the historic Laurier policy of no commitments in advance to support the Empire and the least consultation possible in defence or foreign policy lest it imply moral commitments. On the other hand, we were unwilling to face the logic of our geographical situation and adopt a declared policy of neutrality in the event of another war, as Switzerland had long done.

We were equally indefinite about our relations with the League of Nations. Europe seemed to have settled down to equilibrium and we could accept membership in the new League of Nations without entailing risks. Indeed membership seemed but evidence of our new status in the family of nations rather than an association involving international responsibilities. We immediately sought by amending the covenant to weaken the commitments which membership implied and failing this we followed a policy of explaining away these obligations, of insisting that they went no farther than those of membership in the British Commonwealth of Nations which we fondly believed at times entailed no obligations at all.

Our relations with the United States after the Washington Conference were perhaps the most satisfactory of all. Our Pacific front was as secure as our Atlantic front; the United States was unconcerned about our strategic situation, or the state of our defences. There were indeed no indications that we had any obligations, legal or moral, to co-operate in the defence of the continent.

Meantime, world trade was undergoing a remarkable revival and expansion. For a few years there seemed to be no limits to the expansion of our external markets but our own capacity to produce. We expanded production in many lines but particularly in the primary commodities of wheat, pulp and paper, base metals, gold, thus increasing our economic dependence on the outside world at the same time that we were emphasizing our political autonomy and freedom from external obligations. Had world trade continued to expand we should have reaped a rich reward for our daring. As it was, we were extremely vulnerable to external shocks. But despite our great dependence on the widest possible area of international trade we assumed no responsibility for maintaining the

system. When efforts were made at Geneva or elsewhere to provide the international machinery necessary to preserve and strengthen the international trading system we were interested only in protecting our autonomy and freedom of action. We were "last ditch defenders of sovereignty."

But I do not intend to condemn Canadian policy during these years. In an anarchical world, such as really existed in the post-war era despite the existence of the League of Nations, every state is entitled in formulating its policies to take full advantage of its geographical position and the existing international situation. Moreover, internal conditions, especially the bi-racial character of the Canadian people, made any other policy difficult in the extreme, if not impossible. One of the first, if not indeed the first, aim of our policy during these years was to keep the Canadian people united. The split which had arisen during the war had to be healed if we were to act as a nation. But it should not be overlooked that a happy combination of external circumstances during these years made possible a policy of "little Canadianism" without apparent risk to our economic or political security, and encouraged us to assume that autonomy was the end of nationhood. But the Indian summer of the nineteenth century is over; the peculiar international situation of the post-Versailles era is never likely to occur again.

The Collapse of the Post-Versailles World. Economically the post-Versailles world collapsed with the depression of 1929-30. Freedom of international trade in the nineteenth-century sense came to an abrupt end; quotas, two-way trade agreements, exchange dumping provisions, embargoes, export bounties, and so on, succeeded the world over the relatively mild restrictions of tariffs. Canada immediately endeavoured to meet the storm in two ways: first, in common with many other countries we resorted to a drastic upward revision of the tariff, which included various administrative devices that in fact added to the tariff barrier, thereby assisting in restricting still further the declining volume of world trade: second, we took the initiative in seeking to restore the eighteenth-century preferential Empire, an objective partially realized in the Ottawa Agreements of 1932. The Ottawa Agreements undoubtedly helped to assure Canada of continued, if not increased, markets within the Empire and they probably induced us to set more of a cash value on the Empire. But there is little doubt that the revival of a preferential British Empire helped also to precipitate imperial expansion by the "have-not" powers.

The next step was to assure our position in our other important market, the United States. The Hull trade programme offered the opportunity and the trade agreement of 1935 was an important step in this direction. The second and more important step was the revised agreement of 1937 in which Canada by forgoing certain privileges in the British market for others in the United States facilitated an Anglo-American trade agreement. 1937 is thus an important milestone. It marks the formation of a new economic *entente* between the member-states of the British Commonwealth and the United States. It was an attempt to revive and preserve as between these countries at least something of the free trading system of pre-depression years. Canada had much to gain: in an uncertain world her two most important markets were thus partially secured; and any move to preserve or increase the total of world trade tended indirectly to benefit her as a great exporting nation.

The Reversion to Colonialism. In the political field, however, we were much more prone to let matters go by default. The European situation began to change rapidly with the accession of Hitler to power in 1933. Our policy of no commitments either way in advance, suitable as it may have been to a relatively stable international situation, came to have little relevance to the changing scene. Sentiment and interest predisposed us to support Great Britain in any crisis, whatever our official policy in advance of the crisis. Yet insistence on autonomy and freedom of action and careful avoidance even of consultation on matters of foreign policy meant simply that we were dodging the issue. Such a policy, moreover, tended to lull us into a false sense of security. As the tempo of events quickened we tended more and more simply to underwrite British policy. We followed almost identically the same course in the Sino-Japanese War, in the Ethiopian issue, and in the Spanish Civil War. We made no protest apparently to the naval agreement of 1935 with Germany which permitted Germany to build up to 35 per cent of British naval strength. We approved officially (afterwards, of course) of Mr. Chamberlain's appeasement policy at Munich. When appeasement failed and a desperate effort was made to re-establish the balance of power by declarations that an attack on Poland, Roumania, or Greece would be considered a *casus belli*, we tacitly approved by expressing no dissent. Nor did we apparently object to the proposed alliance with Russia of the summer of 1939, despite the apparent danger which a Russian alliance would undoubtedly have been to the internal unity of

Canada in the event of war.¹ Yet despite our uncritical acceptance of British policy we were quite unwilling to face the consequences should that policy need to be supported by force. Rearmament, it is true, began in a modest way in Canada in 1937, but it was repeated *ad nauseam* that increased expenditures were for the defence of Canada in Canada only. The Canadian rearmament programme did not indeed start in earnest until the outbreak of war. We had reverted psychologically to the status of a colony, willing to follow uncritically Britain's lead, but unable to support her effectively when the crisis came. Fortunately, for the time being, we did not need to; British naval control was still unchallenged, and the Maginot Line still intact. The allies were themselves unready for offensive operations and for eight months they were not subject to serious attack. We appeared to have leisure to prepare for a limited war effort.

But these comforting illusions were swept away by the spring blitzkrieg of 1940 when the last of the post-Versailles world tumbled about our ears. From a very junior partner in an allied cause Canada became overnight the second partner in a desperate enterprise now restricted for effective purposes to British Commonwealth countries. For the first time in its history Canada had also to consider seriously its Atlantic frontier. A new enemy in the Mediterranean had now to be taken care of by the Royal Navy; the French fleet, the second fleet in Europe, all but fell into enemy hands; the European mainland from the Arctic Circle to the Franco-Spanish frontier, with all its immense ship-building yards and its productive equipment in iron and steel, was in enemy hands; and Britain faced invasion. The naval line protecting North America against a hostile Europe was stretched dangerously thin.

The New World Balance of Power. It was in this hour of desperate need, the blackest perhaps since Austerlitz, that the British Commonwealth found a new ally in the United States. I use the term ally advisedly. True, there has been no formal alliance, no promise of immediate assistance or even ultimate assistance except arms and supplies. But the progressive strengthening of the understanding between governments and between peoples which has developed since the summer of 1940 indicates nothing less than an alliance of the strongest sort, an alliance based not as Hitler's alliances with his satellite-states on threats and coercion, but on common dangers, common interests, common

¹E.g., see speech of various French-Canadian members in the War Session of Parliament, September, 1939.

sympathies. Indeed the very absence of formal instruments of alliance is indicative of its strength; none is needed.

The all-inclusive common interest which British and American peoples have in this struggle is the preservation of their way of life. But our concern here is primarily with common strategic interests. There are two: first, to prevent the North Atlantic from falling under the control of any other power; and second, to preserve the territorial *status quo* in the mid-west Pacific and Oceania. These are vital strategic interests not only to the United States and Great Britain, but to the Dominions as well, though in varying degrees. Canada's interest is primarily in the North Atlantic. The Ogdensburg agreement of 1940 is of a piece with the destroyer-for-base deal and the lease-lend bill. South Africa, though less directly concerned, cannot disregard the probable territorial changes in West Africa which might follow loss of control of the North Atlantic. To Australia and New Zealand as well as to India, the mid-west Pacific is the vital area in British-American co-operation. The conversations between defence authorities at Singapore and in the Philippines and the visit of an American fleet to Australasian waters are indicative of the close co-operation between the United States and British Commonwealth countries concerned in the area. Hitherto British naval control of the North Atlantic depended on French hegemony in western Europe and North Africa. In the Far East, French Indo-China was a barrier against the southward march of Japan. The United States has now replaced France as the principal partner of Great Britain in the maintenance of the strategic *status quo* in both regions. Thus, in Canning's grandiloquent phrase about the Monroe Doctrine when it was first announced, the New World has come in to redress the balance of the Old.

The changes in American policy which the new British-American relationship indicate are of profound significance. The new relationship between British and American peoples has been made possible by a profound change in the direction of American foreign policy. In September, 1939, the United States was still wedded to its new policy of neutrality which treated all belligerents alike and forbade the sale of arms or munitions or the granting of loans to any belligerent, whatever the rightness of his cause. In his message to Congress of January 6, 1940, President Roosevelt declared: "The United States is committed to the full support of all those resolute peoples everywhere who are resisting aggression, [and] . . . to the proposition that the principles of morality and considerations of her own security would never permit her to ac-

quiesce in a peace dictated by aggressors, sponsored by appeasers."² The United States has crossed a great divide since September, 1939. Broadly speaking, American policy now has a two-fold objective: the direct defence of the Western Hemisphere; and its indirect defence through furnishing aid to the victims of aggression elsewhere, but particularly to Great Britain. The immediate purposes are, of course, to accomplish the defeat of the Axis powers in the European theatres, and to checkmate Japan in the Far East. But it would be a mistake to assume that American policy looks no farther than the present crisis, or that the change in American policy is not likely to have long-range consequences far beyond the outcome of the present war.

The policy of hemisphere defence is broadly based on four related courses of action: first, rearmament on a prodigious scale, especially the construction of a "two-ocean" navy; second, the construction of a screen of naval and air bases on the Atlantic from Greenland to Trinidad; third, co-operative defence measures with other American countries; and fourth, economic integration of the western hemisphere.

The first three lines of policy combined are likely to have a profound effect not only upon the defensive position of the Americas *vis-à-vis* Europe, but upon the balance of world power. At the close of the present conflict the United States is likely to be the strongest naval, air, and military power of all time, well able with the help or goodwill of other American nations, to defend the Americas, especially if the chain of Atlantic naval bases can be extended southward around the bulge of South America, and well able to play the leading role in world affairs.

But the economic aspects of the programme of hemisphere defence must not be overlooked. Like Canada, many South American countries have been vitally dependent on European markets, and particularly the southern group, Brazil, Argentina, Chile, Uruguay, and Paraguay. Economic difficulties are fruitful of social disturbances, and there was grave danger that these countries might become fertile soil for Nazi or Fascist propaganda, especially should Spain join the Axis. Further, in the event of an Axis victory these countries would be in a poor bargaining position as against a totalitarian Europe, and hence vulnerable to Axis pressure. The United States has countered these menaces partly by offering direct trade advantages or financial assistance, partly by proposing through the so-called Pan-American Union a broad programme of assistance which would include capital investment for economic re-

²As quoted in *Bulletin of International News*, vol. XVIII, Jan. 11, 1941, p. 14.

organization or construction of defences, and aid in financing crop surpluses. This programme admittedly has not yet proceeded very far, and there are grave difficulties in the way of a major shift in the direction of trade to north-south channels because Latin American export surpluses in many items, notably agricultural products, are competitive with those of the United States. But Latin America is at present virtually shut off from European manufactures and an industrial revolution of major proportions is in progress in Brazil, the Argentine, and elsewhere. Given a long war, these developments along with the determined efforts being made to redirect trade north and south are likely to lessen Latin American dependence on Europe and to strengthen commercial relations with the United States. One result may well be that Great Britain will not regain her old position in Latin American markets.

Canada and Hemisphere Defence. We have now to consider Canada's relation to the policy of hemisphere defence. It has long been apparent that Canada fell within the American defence zone, but neither the United States nor Canada was inclined to take official notice of this situation until tension mounted in Europe in the months preceding the outbreak of war. The first public recognition appears to have been President Roosevelt's Kingston speech in the summer of 1938. Said the President: "The Dominion of Canada is part of the sisterhood of the British Empire. I give you assurance that the people of the United States will not stand idly by if domination of Canadian soil is threatened by any other Empire." To this the Prime Minister replied in his speech at Woodbridge two days later: "We, too have our obligations as a good friendly neighbour, and one of them is to see that, at our instance, our country is made as immune from attack or possible invasion as we can reasonably be expected to make it, and that, should the occasion ever arise, enemy forces would not be able to pursue their way, either by land, sea or air to the United States, across Canadian territory." Conversations between American and Canadian general staffs began about the time of the outbreak of war, though unknown at the time to the public.³ But the collapse of France precipitated formal recognition of a common interest in defence. The Ogdensburg agreement of August, 1940, between President and Prime Minister was the result.

On its face the agreement was little more than a joint statement of policy. It declared that a permanent joint defence board would be

³See speech of the Prime Minister, *Canada, House of Commons Debates*, Nov. 12, 1940, for documents and chronological account.

established, "to commence immediate studies relating to sea, land, and air problems including personnel and material"; and that it would "consider in a broad sense the defence of the northern half of the Western Hemisphere." The agreement makes no promises of aid by either party, and does not even guarantee reciprocal use of bases. But it is intended to be a permanent arrangement and it proposes to consider defence as a continuous problem. Its most remarkable feature is perhaps its geographical extent—the northern half of the Western Hemisphere. This would include defence of the west coast from Panama to the furthest Aleutian Island, the Arctic from Bering Sea to Greenland, the Atlantic from Greenland to Trinidad. Hitherto we have been shy of recognizing any obligations to defend anything beyond our own borders. The Ogdensburg agreement, admittedly, imposes no legal obligations to defend anything, but common study of defence as a single problem may well lead to moral obligations. Since the last war we have avoided participating in discussions of the Committee of Imperial Defence precisely because we wanted to avoid any such obligations.⁴ Further the agreement may well be the basis for much more definite arrangements, even commitments between the parties. Indeed, joint staff conversations appear to have become a regular practice, and Canada has already undertaken to construct and maintain a chain of air bases from the border to Alaska and grant the United States full rights of use. The United States has also accorded to Canada rights to use its new Atlantic naval bases, the logical co-relative of which would be the right of the United States to use Canadian air and naval bases on the Atlantic, although this has not been announced to date. There have also been suggestions at least in the press of common equipment as far as possible between the two countries in order that Canada could be assured of adequate supplies in a crisis. An agreement between President and Prime Minister in April, 1941, provided to some extent for division of labour in the production of supplies of war.⁵ These developments indicate a profound change in Canadian defence policy. Hitherto we have ignored the defence policy and problems of our neighbour, just as Belgium officially ignored those of France. Now we are considering jointly defence as a single problem. In Europe such arrangements would be called nothing less than an alliance.

It may be that we have in fact lost something of our boasted freedom

⁴C. P. Stacey, *The Military Problems of Canada* (Toronto, 1940), p. 103.

⁵See *New York Times*, April 20, 1941.

of action in the process, but in a cataclysmic world we had no sensible alternative. On both coasts, Canadian territory lies between mainland United States and its outlying bases. Were the United States at war on either ocean its naval and aerial operations would be crippled without the use of Canadian ports and air bases. In such an event could Canada now reasonably deny such use, whatever the prior agreements on paper? The question, however, is largely a rhetorical one, since it is scarcely conceivable that the United States could be involved in war on either ocean without Canada also being engaged as a member-state of the British Commonwealth. Another possible development of our new association with the United States is that the United States may not be as complacent in the future as it has been in the past over the state of Canada's defences. We must be fully prepared to pull our weight in continental defence, and this may well mean that we must retain substantial armaments even with the return of peace. Further, should a wave of isolationism at some time or other sweep over the United States as in 1920, it might raise for us certain complications in our relations with the British Commonwealth or any new collective system. On isolationist premises there is real ground for Colonel Lindbergh's complaint after the outbreak of war that Canada had no right to bring the war to the Americas. But these are hypothetical situations which may never eventuate, and it is in Canada's own interest to prevent them from arising. The theoretical contradiction between our geographical position and our historical connection with the Empire has always existed; the chances of its becoming a political issue have declined as Anglo-American amity has advanced.

Certain very practical issues, however, remain, among them the division of responsibility for continental defence. Should Canada, for example, assume any responsibilities beyond her own frontiers? In peace we have avoided such responsibilities in our relations with the Empire, but with the outbreak of war we immediately assumed responsibilities for the defence of Newfoundland and Labrador, and we have sent garrisons to the West Indies and Iceland. Should we continue to carry any of these responsibilities with the return of peace? One result of the lease of naval bases in the British West Indies to the United States will be that these colonies will become in fact naval protectorates of the United States. Since the last war the British West Indies generally speaking have become the problem children of the Empire.⁶ The

⁶E.g., see W. M. MacMillan, *Warning from the West Indies* (London, 1936).

problem of surplus sugar is proportionately as serious for the West Indies as the problem of surplus wheat is for Canada. Investments have been almost wholly British, except in Trinidad, and in many islands the worst features of absentee ownership in a declining economy are evident. A serious racial problem is everywhere apparent. Does Canada want the white man's burden in this region, or should she leave it to the parties most concerned, Great Britain and the United States?

Newfoundland is a more immediate problem. As intimated above, Canada assumed responsibility for defence of Newfoundland on the outbreak of war, and the island is now within Canada's Eastern Command. It is also evident that the United States will construct there very powerful air and naval bases, and that it will be the northern anchor base on the Atlantic screen now being constructed. With American bases it should be highly secure against attack or occupation by a hostile power. It would seem certain, too, that Canada will have full use of American bases there whether for purposes of protecting convoys, or for patrolling coastal waters and the Gulf of St. Lawrence. But would Canada be quite prepared to see Newfoundland become an exclusively American protectorate? Would Great Britain? Would the people of Newfoundland themselves? The future status and relation of Newfoundland thus raise many difficult practical as well as theoretical problems. But given goodwill on all sides, which may be anticipated, they need not become political issues.⁷

There remains the economic side of hemisphere defence. How would Canada fit in to a hemisphere economic bloc? It is not without significance that we have already agreed to exchange diplomatic representatives with Brazil and the Argentine, that conversations appear to be in progress with others, and that we despatched a special trade mission early this year to tour South America—though it failed to complete its tour owing to the illness of the Minister. But it is doubtful if we could very greatly increase our trade with Latin America except over a long period. The real difficulties are that our surplus products are in many respects competitive rather than complementary, and that we could only increase our purchases of tropical or sub-tropical products

⁷For further discussion see Stacey, *Military Problems of Canada*. For an American view of the situation see M. H. Clark, "Newfoundland: America's Outpost, No. 1" (*Harpers*, Feb., 1941). For text of naval base leases see Department of State, *Press Releases*, nos. 132-3, March 27, 1941, and especially the *Protocol* between the governments of Canada, the United Kingdom, and the United States.

such as fruits, cotton, and coffee at the expense of the United States, or the West Indies, or other Empire countries. At best, increased trade with Latin America offers no solution for our surpluses of wheat, paper, base metals, tobacco, meats and other agricultural products, though increased economic activity in Latin America might well restore markets for our Atlantic fisheries. Potentially Latin America is a great market for producers' goods and consumers' manufactured goods, but the unit costs of our industries in many such commodities are higher than those of the United States because of our much smaller internal market. Thus any substantial increase either in import or export trade with Latin America appears to be fraught with great difficulty, and redirection of our trade to north-south lines on any large scale could only be accomplished by painful internal reorganization.

The Future. In commenting on the lease of naval bases to the United States in August, 1940, Mr. Churchill declared in Parliament: "Undoubtedly this process means that these two great organizations of the English-speaking democracies, the British Empire and the United States, will have to be somewhat mixed up together in some of their affairs for mutual and general advantage. For my own part, looking out upon the future, I do not view the process with any misgivings. I could not stop it if I wished; no one can stop it. Like the Mississippi, it just keeps rolling along. Let it roll. Let it roll on full flood, inexorable, irresistible, benignant, to broader lands and better days."⁸ It is obviously in Canada's interest to encourage intermingling of British and American affairs, not only for the achievement of victory but in the world after the present deluge. Co-operation between the British Commonwealth and the United States in naval control of the high seas of the world offers the sole hope of restoring some sort of international order on a world scale. Co-operation in the economic affairs offers the sole hope of restoring international trade to anything like a free basis. Both courses are essential to the welfare of the Canadian people and the future of Canada. And only by continued British-American co-operation in world affairs can Canada hope to avoid making the awkward choice between her geographical interests and her historic loyalties.

So long as the present common danger unites British and American peoples there need be little apprehension about the continuance of co-operation. The danger of rifts is greater after the war. While we must assume an ultimate allied victory and bend all our efforts to this end,

⁸As quoted in *Bulletin of International News*, vol. XVII, Sept. 7, 1940, p. 1156.

other possibilities and their relevance to continued co-operation between British and American peoples should not be overlooked. Defeat would no doubt mean for Great Britain at the very least serious restrictions on her naval power and a reduced Empire. Fantastic suggestions have been made from time to time that Canada might in such an event succeed Britain as the centre of a new Empire-Commonwealth. Even if it were possible to shift an Empire about as we would a pile of bricks, only sheer megalomania could induce us to think that our economy could carry the cost of the Royal Navy, quite apart from other incidental expenditures of Empire. Rather we might anticipate the United States assuming something of the role of naval protector of the Dominions and the dependent Empire which remained, and we could certainly expect such a move to be welcomed by the Dominion and colonies concerned. Otherwise they would face eventual domination by, if not enclosure in, the empire of one or other of the victorious Axis powers. The Panama would then supplant the Suez as the life-line of the surviving Empire-Commonwealth, or the new British-American-Empire-Commonwealth.

A military stalemate is another contingency which should not be overlooked. In such an event, the only possible safe course for British and American peoples would be to remain as a gigantic armed camp, ready at any moment for the renewal of the contest. Yet it may be asked whether, if the United States had become fully armed, with its naval, air and base programmes completed, the American people's enthusiasm for Britain's cause would then remain at the high point it has reached during the present conflict. They might indeed conclude they would be able to defend alone, with the aid of American countries, all their vital interests.

Victory opens various possibilities. Victory like defeat, is, of course, a relative term—not every war is concluded with a Waterloo, and not every peace conference is a Versailles conference where boundaries in three continents can be redrawn. It is idle to speculate on the conditions under which another peace conference may sit, or about specific peace plans.

We must content ourselves with a few generalities. Two broad conclusions are apparent. First, the dependence of the allied cause on American aid for the achievement of victory will be greater this time than the last, whether or not the United States actually becomes a belligerent. Second, if experience of the past twenty years is any guide, stabilization of the world in the post-war era will be impossible without

the active support of the United States. It would therefore be ridiculous to contemplate a peace settlement which did not have the full approval and support of the United States.

The most serious problem of a peace settlement will no doubt be the nature of the new Europe. As the brief interlude between great wars has abundantly shown, a Europe divided into sovereign national states is no solution. Effective sovereignty has always existed only for those states with sufficient power to maintain it, either by their own arms or the combined arms of states sufficiently aware of common danger to achieve some degree of military unity. But the speed and power of mechanical armament have perhaps struck the fatal blow to national sovereignty in the accepted sense in Europe. The collapse of France, hitherto regarded as the greatest military power in Europe, in a campaign of thirteen days can scarcely be erased from the consciousness of European peoples. Even the oppressed peoples of Europe may conclude that the sovereign national state is a luxury they can no longer afford. On the other hand, European unity under a ruthless dictatorship whether or not it were eventually tolerable to European peoples, is the kind of unity which the rest of the world, and particularly Great Britain, cannot afford. Nevertheless it would seem essential that some sort of unity of Western Europe must be organized if we are to avoid recurring major wars. The minimum requirements would appear to be unity for internal police and economic purposes. It may well be asked whether unity of this sort could be achieved without Great Britain taking an active part therein. But could Great Britain as the centre of a world-wide Empire-Commonwealth throw in her lot completely with Europe? Certainly it would appear impossible for her to assume active responsibilities for maintaining a European order without a clear understanding and probably assistance from the United States. Will this be forthcoming? Have the American people thrown isolationism over for good? These must remain unanswered questions. But if American understanding and support is not forthcoming could Great Britain afford to sponsor a united Europe, which, whatever its original purpose, might well some time or other become a menace to British security?

The question of what to do with Europe is thus very much the responsibility of North America. One of the most heartening developments in Anglo-American relations is the intensive study now being given in the United States to so-called peace aims, and the appreciation of economic aspects of the problem both by the Administration and by

Mr. Willkie who presumably represents the most influential section of the Republican party.⁹ Canada's destiny is at stake not only in the present conflict but in the peace settlement. Peace aims is thus a subject to which both the Canadian government and the Canadian people might well give their maximum attention. Indeed, a joint commission between Canada and the United States on peace aims is perhaps as great a requirement as a joint defence board.

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⁹E.g., see despatch Washington date-line in *Christian Science Monitor*, April 5, 1941, p. 1, col. 1; "Peace Aims," (supplement to *Fortune*, April, 1941); "Preliminary Report of the Commission to Study the Organization of Peace" (*International Conciliation*, no. 369, April, 1941).

THE ECONOMIC ACTIVITY OF THE STATE IN THE DOMINIONS: NOTES ON COMPARATIVE DEVELOPMENT¹

ALEXANDER BRADY

THE positive economic activity of the State in the overseas Dominions has assumed two principal forms: the furthering of national economic power through the protection of industry in what scholars like Heckscher might call a neo-mercantilist manner, and the providing of social services in accord with modern social democratic doctrine. While the Dominions resemble one another in recognizing these forms of action, they sometimes diverge widely in the details and range of policy, being conditioned differently by the geographic and socio-economic forces of frontier countries. Protection issues in a complex of policies concerned with tariffs, bounties, quotas, marketing controls, and varied forms of financial assistance, or outright public ownership, in order to establish fresh industries and to aid those already in existence but facing intense competition from more mature industrial competitors overseas. In all these policies the broad political aim is to achieve national power through the transformation of the ill-balanced economic life of sparsely settled countries into economies both integrated and diversified.

The interests which are politically powerful at the time determine what policies are emphasized and what are to be the immediate goals. Sometimes there is ready agreement among the chief interest-groups in recognizing that a small population cannot legitimately claim control over a vast territory unless it is able to achieve settlement and development. Recognition of this fact by the Canadian public in the eighties led to the generous bonusing of the Canadian Pacific syndicate in order to create a transcontinental railway within Canada, and fiscal protection was likewise accepted in order to ensure east-west rather than south-north movement of traffic. Similarly the numerous controls of the

¹Only the four overseas Dominions are here considered.

Commonwealth and the state respecting Queensland sugar have been partly designed to guarantee a white population in the Australian tropics, and thus counter the claim that this territory should be opened up to settlement by Asiatics. In all the Dominions at some time aggressive efforts have been made to stimulate the flow of immigrants in order to make certain that the national territories were adequately occupied.

But, since protection is mainly determined by the varied and at times contradictory aims of the organized interests who give it political support, nowhere in the Dominions is it developed with genuine consistency. Everywhere it has elements of contradiction which are rendered acceptable, or at least escape sharp criticism, because throughout it is a reflex of a growing nationalist sentiment. It is sanctioned by an appeal to national consciousness or to an adequate substitute for such. In Canada at the outset it was presented to the electors by the Conservative party as the National Policy, with the implication that free trade was anti-national. In Australia its proponents variously appealed to national feeling. In South Africa the policy of protection for manufactures was significantly first introduced by the Nationalist party after it came to office in 1924, but in this case a motive, not found in the other Dominions, intruded; viz., the desire through protection to foster secondary industries in order to provide employment for members of the white race. In the basic industries of mining and agriculture most of the unskilled labour was performed by the native races and the "coloured" population, and it was intended that secondary industry should be mainly a preserve for white labour.² Thus protection, combined with the civilized labour policy (e.g., preference in employment for whites), is a mode of preserving the white labour and its standards of living, and is readily defended politically by an appeal to the colour prejudices of those with decisive political power, the population of European descent.

Obviously this protectionism of the Dominions broadly resembles the economic policies of the mature industrial states, faced by the tensions of international rivalry and resisting as national groups the imperialistic pressures of contemporary capitalism. Like other modern states the Dominions respond to those technological forces which have stimulated economic nationalism by multiplying the sources of power and hence by arresting that regional specialization characteristic of a former age when coal and the simple steam-engine faced no serious rivals. But their national and protective policies are fashioned by the special circum-

²*Report of the Customs Tariff Commission (U. G. no. 5, 1936).*

stances of geographic, economic, and social structure. From the outset the economic functions of their governments have been conditioned by the close dependence on a relatively large export trade in primary products, which for its promotion has required many forms of public aid: the subsidizing of railways, or even their direct construction by the state; the building of costly canals as in Canada; the establishment of irrigation projects as in Australia; the discovery by research departments of wheat plants and grasses for special physical environments as in Canada, Australia, and South Africa; and government regulation in all these communities to ensure the marketing of high-grade products. But ultimately a stage is reached when economic diversification is deemed to be necessary for national security, and then secondary industry is granted the protection which for generations it has enjoyed in Europe. Events after the peace of 1918 impaired economic internationalism, and the Dominions turned more methodically to fiscal protection, in which South Africa and New Zealand showed the most restraint. But in all the Dominions protection has been tempered by a deep interest in the export of staples. To abandon this export would in most cases involve a painful transformation in an economic life distinctly more specialized than that of mature industrial states where the play of historical forces has created a wider and natural diversification. While for this reason the extent of economic nationalism in the Dominions has differed from that in contemporary Europe, the autarkist tendencies abroad have forced the pace of state development. The Dominions have felt the full impact of a world trend.

As in Europe, protection is directed not simply to manufactures, but to the agricultural industry, which in all of these countries is politically powerful. Canadian farmers in the Eastern Provinces have generally supported the policy of protection, despite occasional protests on the incidence of the tariff. At intervals they have aggressively sought it for their own products, and in any case they have ordinarily been convinced by the "home market" argument that they will share in the benefits of protected urban industry. With the development of the wheat economy in Western Canada, the farmers in the East turned to such specialities as dairying, but soon encountered in the tariffs of the United States a barrier to the markets of that country. Irritated by the protectionist policy of their neighbour, they were easily persuaded to de-

fend the home market by protective duties.³ In the Western Provinces the wheat-growers from the outset were critical of protection because they were not themselves primarily producing for the urban markets of Canada, and could therefore see no benefit in being compelled to buy the protected manufactures of Canadian towns. The enlargement of Eastern urbanism was not their concern. But since on the collapse of international markets they have shared in the benefits of pegged wheat prices, they have been less aggressive in opposing protection, and more conscious of being a part of a Canadian economy wherein protection and other state controls are the essential and daily fare of life.

In Australia some agrarian groups have been more vigorous than their counterparts in Canada in advocating and achieving protection in various forms. In the sixties David Syme, the Horace Greeley of Australia, contended that protection enabled a town population "to support the rural population to the mutual benefit of both. The best market the farmers could have is the home market, because it will substitute for the uncertain demand of foreigners, a steady unfluctuating demand for the products of the soil." For long this stock argument served its purpose on many political platforms, and won substantial agrarian support, but more potent recently has been the plea, emphasized especially by the Country party, that the farmer should be provided with *compensations* for being forced to buy the products of protected secondary industry. These compensations are direct agrarian protection, and commonly assume the form of ordinary bounties from the Treasury, or the maintenance through marketing boards of "home consumption prices"; e.g., prices fixed higher in the home market than export prices, in order to cover cost of production under Australian conditions.⁴ Control to ensure protection for the producer has here been extended to export quotas, prices, and finance, and import duties are merely one means to the end sought. The boards which exercise this control are usually dominated by the producers themselves. The cases of sugar, butter, dried fruits, and at intervals, wheat, illustrate these agrarian supplements to the Australian protection system. Canada has no rural child so carefully fostered as the sugar industry of Queensland. In this case the planters, by an embargo on imports, have long been guaranteed unchallenged possession of the home market, and enjoy

³See H. A. Innis (ed.), *The Dairy Industry in Canada* (Toronto, 1937), especially part v.

⁴On these marketing controls see D. B. Copland and C. V. Janes, *Australian Marketing Problems* (Sydney, 1938).

there a price fixed by a board sufficiently high to subsidize sales abroad. During the period of war, 1914-18, the system of controls in sugar became elaborate, and survived in the subsequent period of peace. Under the legislation of Queensland in 1915 the Central Cane Prices Board was created with authority to allocate to each mill the lands from which it should draw its supply of cane, and to fix the value of the cane delivered to the mill. During the war the government of Queensland acquired the sugar as it was milled, and sold it to the Commonwealth, which controlled distribution and fixed prices, imposing embargoes on export and import. After the war the Commonwealth retained the embargo on imports, and increased the domestic price to enable the industry to establish itself. Later it withdrew from direct control of the industry, and merely negotiated periodic agreements with Queensland, whereby it retained the embargo on imports while Queensland undertook to provide sugar at a price fixed for a term of years. Thus sugar presents the case of a protected industry with an imposed maximum price and with a degree of rationalization through state direction uncommon in protected industries. In addition to the controls over production and marketing, the industrial court determines the wages and working conditions of the employees in the industry.⁵

South Africa and New Zealand also illustrate the power of agrarian pressure for protection. In South Africa, especially since 1929, protection of rural industry has been no less elaborately developed than in Australia. Government policy has created an intricate structure of measures, involving prohibitions on import, high tariffs, fixed internal prices, and compulsory export quotas.⁶ As in the military states of Europe prior to the outbreak of war in 1939, there was a frank attempt to achieve national self-sufficiency in the production of wheat by prohibition of import except under licence. Many other forms of aid and regulation were provided, which made fiscal protection inescapable; e.g., subsidized housing and assisted purchases of livestock. This extensive policy of restricting import and bonusing export was mainly forced upon the Union by the autarkist tendencies of Europe after 1925, but the political power of the agrarian interest determined that the policy of sheltering the farmer should be carried to perhaps greater

⁵See J. B. Brigden, *The Story of Sugar* (Queensland Bureau of Economics and Statistics, 1932).

⁶See C. S. Richards, "Subsidies, Quotas, Tariffs and the Excess Cost of Agriculture in South Africa" (*South African Journal of Economics*, Sept., 1935); F. J. van Biljon, *State Interference in South Africa* (London, 1939), especially chaps. v and vi.

lengths than in any other Dominion. The Europeans on the land (only some 34 per cent of the total white population) are dominantly of Afrikaans stock, and are politically aggressive. It is part of their nationalist creed that the state should specially nurture agriculture. In their desire to enable the Afrikanders to breed on the soil and to maintain or even to further their preponderance among the white population, there is obviously a powerful indigenous impulse to agrarian protection. The facts of geography also necessitate state action. Instability of production, caused in many parts of the country by recurring drought, undermines the self-reliance of the farmer and drives him to seek public aid. Insecurity leads not merely to the various forms of protection mentioned, but also to concessions which are familiar enough in other Dominions; e.g., favourable freight rates on government railways for agrarian produce, and generous credit facilities. In New Zealand agrarian protection, as represented in import duties and embargoes, has bulked less important for the obvious reason that here the dominant rural interests have been those which produce for markets abroad wool, dairy produce, and meat. Prior to the outbreak of war in 1939 the Dominion commonly exported 85 per cent of its dairy produce, over 90 per cent of its wool, and 60 per cent of its meat. Protective measures are of little use in furthering the sale of these commodities, although the producers have energetically obtained marketing controls and public credit facilities. Tariff protection however has been provided for wheat growing, and subsidies have been paid on the production of such commodities as fruit, eggs, and honey.

While in all the Dominions the interests of agriculture and manufactures take a lead in fashioning a protective system, organized labour may also play a part. Notably it has done so in Australia, where protection and social democracy have been intimately linked. In this matter Australia and Canada are in contrast. By the circumstances of geography and soil, Canada has possessed a family-farm economy, with a large rural population but no considerable agrarian proletariat, and in the eastern part of the Dominion this economy has only gradually surrendered its self-sufficient and unspecialized character before the urbanizing pressure of industrialism. Australia, owing to geographic controls, preventing cultivation of the interior, has never been, and cannot be, a rural state in this sense. A recent study indicates that 55 per cent of the area of the Commonwealth is used for pasture, 40 per cent is waste, and only some 3 per cent is cultivated as crop and orchard

soil.⁷ Wool production in the dry hinterlands requires extensive land units with a rural working class rather than small proprietors, and the concentration of the railways upon a few important harbours led to the rise of three or four major cities, instead of a multitude of small towns. Out of this economic and social structure there emerged a feature of the Australian community absent in Canada, a powerful labour movement, rural as well as urban, which has influenced all state policies from the early years of the century to the present. Whereas Canada in 1914 had a total trade-union membership of 160,000; Australia in the same year, with a population smaller by two million, had 523,000. To express the matter otherwise, in 1937 about *one* Australian in every *seven* was a trade unionist; in the same year about *one* Canadian in every *twenty-eight*. From this powerful labour army there has come in particular those political drives resulting in extensive social services and the public ownership and management of major utilities; from the same source came much of the impetus for protection, viewed by the labour politician as an essential auxiliary to any serious effort to sustain standards of living. Whereas in Canada emphasis in the argument for protection has been thrown more frequently on the ends of industrial security; in the highly trade-unionized Commonwealth it is linked with a socio-economic philosophy stressing a stable standard of living in a White Australia, state-determined wages, and an elaborate code of social services. Protection is thus assimilated fully into the social-democratic goal of labour, a fact which goes far to explain why Australia has the highest tariffs of any Dominion. In New Zealand, by contrast, political labour, while it has a philosophy of protection like that of the Australian movement, is electorally weaker, and has had to rely upon the support of small farmers who are generally hostile to a highly protected urban industry. Hence it is unable to implement fully its protectionist ideas.

A significant part of Dominion protectionism is often loosely described as "state socialism"; viz., the public ownership and management of major utilities, of which all the Dominions afford numerous examples, with the Antipodes assuming the lead in the variety and extent of this form of social control. The Australian states have owned and administered such sundry enterprises as railways, steamships, hotels, banks, insurance companies, forests, sawmills, brick works, and for a time (in Queensland) cattle stations and meat shops. After the depression of

⁷S. M. Wadham and G. L. Wood, *Land Utilization in Australia* (Melbourne, 1939), p. 8.

1929 there was a tendency for some states, notably New South Wales and Queensland, to withdraw from management of certain enterprises. New South Wales sold its brick works and Queensland its cattle stations, but the tendency has not affected the main body of utilities which continue to be publicly owned and supported by a robust opinion in favour of public ownership. Even in Australia and New Zealand, however, this state activity has come only in part from a clearly articulated socialist doctrine; and in South Africa and Canada, hardly at all. It is true that the Labour parties in the Australian states claim in their platforms that their goal is socialism, but, as Professor Hancock remarks, the labour movement in general has been well content that socialist doctrines "should be proclaimed among the faithful and suppressed before the electors."⁸ A similar remark might be made of the movement in New Zealand. The fact is that a Labour party which attempted to press vigorously towards a truly socialist goal would promptly lose its middle-class support, which is always too important to be sacrificed. When forty years ago a French observer wrote of economic developments in Australasia as "socialism without doctrines," he referred to enterprise undertaken by government under the pressure of interests to whom genuine socialist philosophy might be anathema, but who saw no way of marshalling sufficient capital to promote development save through the government. Such "state socialism" emerges readily in frontier communities like the Dominions, where the exigencies of geography require at the outset large capital expenditures to facilitate the exploitation of natural resources, and where, because of the immediate risks, private capital is not easily procurable for such a purpose. The history of railway construction in all the Dominions illustrates this point. Distrust of the private entrepreneur and fear of private monopoly are supplementary influences on public opinion. Fear of monopoly by insurance companies and coal-mine operators was a potent factor in the genesis of the New Zealand state insurance and state coal mines.⁹ Other subsidiary influences also operate. In periods of depression in frontier areas public works, either conducted or subsidized by government, have commonly been resorted to as a method of relief.¹⁰ Many of the small Canadian railways, built in the seventies with public assistance, were originally relief measures, and the other Dominions afford like examples. Even in

⁸*Cambridge History of the British Empire*, vol. VII, part I, p. 494.

⁹See F. W. Eggleston, *State Socialism in Victoria* (London, 1932), chap. II.

¹⁰J. B. Condliffe, *New Zealand in the Making* (London, 1930), p. 307.

ordinary times, under the parliamentary democracy of these communities, there is an insistent pressure to extend public construction as a mode of bringing prosperity to neglected constituencies, and hence of popularizing the party in power. Thus the competitive methods of democratic parties result in widening the concept of a public utility.

The number and range of government enterprises are profoundly influenced by the physiography of the country and the difficulties of its settlement. The pronounced extension of government ownership in the Australian states owes much to the peculiar hazards of colonizing a land of light rainfall and, in many areas, of uncertain wealth. Heavy public expenditure on irrigation and water-conservation there becomes an inevitable accompaniment of colonization. The state ownership of the railways is an obvious product of the same circumstances. The extension of the wool industry and gold-mining remote from the coast necessitated mechanical transport, but sheep-raising in the dry hinterlands provided, in contrast, for example, with wheat and corn lands in North America, light freights per mile. Private companies, anxious for profitable returns, could not provide such territories with adequate rail service, and the state governments, reluctantly in most cases, constructed developmental lines which usually show budgetary losses, but which nevertheless contribute real if somewhat inscrutable social earnings. The state lines help to make possible the community, and should not be judged by the ordinary financial standards of competitive industry. Railway transport in other Dominions developed somewhat similarly, although in Canada geographic circumstances gave private companies for a time a better chance to obtain remunerative freights. Basic industries other than railways show a like dependence upon the capital-feeding powers of government, and for like reasons. Public ownership in the hydro development of Ontario and state aid to the iron and steel industry on the South African Rand are broadly determined by similar considerations. Both are key industries vitally important in the general development of the country; both in their respective territories can subsist on rich natural resources; and both at the outset found help in the credit facilities of the state. The sponsorship of the government enabled these industries to draw capital more readily from the creditor nations, especially Great Britain. Indeed the real meaning of public ownership in the Dominions is that the government becomes a prime agent of investment, directing funds from the capital market of London into industries affected with a peculiar public interest; and throughout, the intimate political relation-

ship between these countries and Great Britain has been of undoubted importance. The Colonial Stock Acts have a significant place in the history of Dominion public works.

In the Dominions social services, concerned primarily with transferring funds from the more fortunate to the less fortunate, have wide range and variety. While they vary in details from one Dominion to another in accordance with the relative bargaining power of social groups, they have conformed to those common conceptions of social justice and expediency prevalent in modern democracies. Throughout these communities the broad features, if not the details, of such measures as family endowment, factory regulation, old-age pensions, and workmen's compensation are alike. The earliest and boldest pioneers in the social-service functions of government have been New Zealand and the Australian states, and even today their legislation remains more varied and advanced than that of Canada and South Africa. The South African Union was at the outset tardy in the development of social services, but since the early twenties it has created an elaborate code, concerned especially with the position of the white worker in industry and fashioned by the peculiar racial situation in the country. The achievements of New Zealand are distinctive. In 1898 this Dominion established the first national measure of non-contributory old age pensions in the English-speaking world, only seven years after the Danish law, the first in Europe.¹¹ This measure had the basic trait of most social services in New Zealand prior to the Labour government of 1935; viz., benefits were paid from the public treasury, and the principle of insurance, with contributions from prospective beneficiaries, was discarded. In 1908 the Australian Commonwealth followed its neighbouring Dominion in the provision of non-contributory old-age pensions, although as early as 1901 New South Wales and Victoria provided old-age assistance. The Dominion of Canada enacted such a measure in 1927, and South Africa in 1928. From the nineties to the accession of Labour in 1935 additions were gradually made to the social service code of New Zealand, but most of these ameliorative measures were consolidated in the Social Security Act of 1938, which came into force in April, 1939, and prescribed old-age benefits, health insurance, widows' pensions, family allowances, invalidity pensions, unemployment benefit, orphans' benefit, and emergency benefits for cases of hardship. The previous system of non-

¹¹Since the German old age pension law of 1889 was contributory, it assumed the character of insurance.

contributory pensions is replaced by one on a contributory basis. All citizens over the age of sixteen pay regular contributions to the social security fund. Up to the present, the Act of 1938 registers the highwater mark of social security legislation in the British Dominions. Its comprehensive character is not simply a product of the Labour party's social philosophy, but of the widening measures of amelioration which were begun by the Liberal government in the nineties. Peculiarly congenial circumstances in New Zealand explain this record in social legislation, and notable among them is the political unity of the state. Legislative power has not been divided by the law of a rigid federalism, and political leaders cannot escape responsibility for policy by pleading "constitutional limitations." In this respect New Zealand has a decisive advantage over Canada and Australia. Also contributory to the focusing of public opinion on social services is the racial homogeneity of the New Zealand community, a trait which it shares with Australia, but which distinguishes it from Canada and South Africa. National controversies are not present to divert attention from social issues. Finally, New Zealand has shared with Australia a vigorous trade unionism, which has consistently spurred governments to deal with social maladjustments.

Probably the most distinctive and significant socio-economic experiment within the Dominions is the compulsory arbitration and wage-fixing, established for a generation in New Zealand and Australia. While New Zealand has here the credit of initiation by its legislation of the early nineties, the experience of Australia has been on a larger stage and in a more complex society. Within the states industrial tribunals prescribe basic wages for the major industries, and thus go far to achieve the Fabian ideal of a national minimum. But important as are the state industrial boards, the Commonwealth Arbitration Court assumes pride of place, not merely because at least 20 per cent of Australian labour directly accepts its awards (the percentage tends to increase), but because its deliberations and decisions influence other wage-fixing bodies, including the Wage Boards of Tasmania and Victoria. Its history, therefore, has been distinguished and influential from its establishment in 1904 to its present firmly entrenched position among the institutions of the Commonwealth. Perhaps not even cricket has so deeply implanted itself in the Australian mind as industrial arbitration, and arbitration has meant wage-fixing upon the basis of such elusive concepts as "fair and reasonable," "normal and civilized." It is needless to emphasize the implicit difficulties and evident shortcomings in this venture of juris-

prudence to reduce industrial warfare and to maintain acceptable standards of living by judicial award. The difficulties have been heightened by the distribution of powers in a federal state. But despite the formidable problems involved, Australian democracy seems confident that industrial arbitration is promotive of its health, and a Prime Minister promptly lost power in 1929 when he attempted to cope with the issues of conflicting jurisdiction by withdrawing the Commonwealth from the arbitration sphere altogether. To the majority of the trade unionists, arbitration is the sheet-anchor of their social security. Even while it has tended to stereotype the standard of living and to transform Henry Maine's famous phrase to read "from contract to status," it suggests to the average trade union leader a greater security and stability than would otherwise exist. Its industrial and political implications are varied and significant. Produced in great part by the pressure of organized labour, it has in turn strengthened trade unionism by illustrating to the workers the advantage of regular membership, since the unions become the essential instruments in representing labour before the industrial courts. It has also furthered the organization of employers, who, when organized, naturally enough are not content simply to bargain about wages, but proceed to regulate prices. To deal with the bogey of trusts, the Commonwealth has anti-trust legislation, which for constitutional reasons, as in Canada, is not eminently successful.¹² Politically the arbitration system has made the workers determined that the Labour party must surrender none of its strength, for the statutes on which it rests can be secure only by the influence of a workers' party in the Legislature. Thus wage-fixing becomes closely interlaced with the other elements of Australian social-democracy, political activity of labour, extensive fiscal protection, immigration laws to exclude cheap labour, and government ownership and management to assist the colonization of a continent which presents peculiar difficulties. It helps to complete what is the most elaborate attempt at economic control through the instruments of the state in any Dominion. These controls, aided by institutions in the field of finance, especially the Central Bank and the Loan Council, made possible that interesting adjustment in costs embodied in the Premiers'

¹²K. H. Bailey, "The Constitution and Economic Policy" (*Annals of the American Academy of Political and Social Science*, Nov., 1931); also, D. B. Copland and J. G. Norris, "Some Reciprocal Effects of our Anti-Trust Laws, with Special Reference to Australia" (*ibid.*, Jan., 1930).

Plan of 1931.¹³ In brief, they lend to the economy a greater flexibility and a more decisive power of adjustment than was ever anticipated by the liberal critics of Australian policies.

Upon the general thought and outlook of Australian labour, the arbitration and wage-fixing system has a significant effect. One senses a pronounced legalism of attitude; a conviction that to fight against awards is unwarranted disobedience to the rules of the game. The spirit of the strike is by no means dead, but it is confronted by the counter spirit of compromise, fostered by the arbitration machinery. Perhaps this amounts to saying that Australian labour is losing its revolutionary temper; certainly it would seem to have lost some of that temper which it possessed when struggling for arbitration and other objectives forty years ago and dreaming the dreams of William Lane, the Queensland labour leader. But it still has (at least to the overseas observer) alertness and vitality; it is still ready to fight vigorously for its standards of living, and it continues to provide to the Commonwealth a unifying and integrating social force, transcending state and regional boundaries, such as Canada with its weak trade unionism lacks. It is the strength and prominence of trade unionism which makes the Commonwealth the most interesting of the major Dominions for the study of economic policy under democracy.

The University of Toronto.

¹³D. B. Copland, *Australia in the World Crisis, 1929-1933* (Cambridge, 1934); W. R. Maclaurin, *Economic Planning in Australia, 1929-1936* (London, 1937).

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